

code of federal regulations

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Public Contracts and Property Management

ORIGINAL

41

CHAPTER 8

Revised as of July 1, 1982

022-003-94839-2

COMPLETED



code of federal regulations

Public Contracts and Property Management

41

CHAPTER 8

Revised as of July 1, 1982

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1982

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COMPLETED

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Cite this Code CFR
thus: 41 CFR 8-1.101

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....	as of January 1
Title 17 through Title 27.....	as of April 1
Title 28 through Title 41.....	as of July 1
Title 42 through Title 50.....	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled **CFR INDEX AND FINDING AIDS**. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,

Director,

Office of the Federal Register.

July 1, 1982.

THIS TITLE

CONTENTS

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT consists of Subtitle A—Federal Procurement Regulations System, Subtitle B—Other Provisions Relating to Public Contracts and Subtitle C—Federal Property Management Regulations System. Subtitle D is reserved for other provisions relating to property management.

The Federal procurement regulations in Chapter 1 of Subtitle A are those government-wide procurement regulations issued by the General Services Administration. In Chapters 2 through 49 of Subtitle A are procurement regulations issued by individual government agencies. The first 49 parts in each of Chapters 2 through 49 are reserved for agency regulations *implementing* the Federal procurement regulations in Chapter 1 and are numerically keyed to them. The remaining parts in Chapters 2 through 49 contain agency regulations *supplementing* the Federal procurement regulations.

Other government-wide procurement regulations relating to public contracts appear in Chapters 50 through 100, Subtitle B.

The Federal property management regulations in Chapter 101 of Subtitle C are government-wide property management regulations issued by the General Services Administration. In the remaining chapters of Subtitle C are the *implementing* and *supplementing* property management regulations issued by individual Government agencies. Those regulations which implement Chapter 101 are numerically keyed to it.

NUMBERING

The numbering system of Title 41 differs from that used for other titles of the *Code of Federal Regulations*. The numbering system is especially designed to permit the keying of agency regulations to government-wide regulations in Subtitles A and C which are issued by the General Services Administration. Chapters are designated by Arabic numerals. Each section number is a combination showing to the left of the decimal point the chapter and part numbers, separated by a dash. To the right of the decimal point the subpart, section, and subsection numbers are indicated in that order. Thus, an agency assigned to Chapter 2, and wishing to implement the cost-plus-a-fixed-fee contract provisions contained in Chapter 1, Part 1-3, Subpart 1-3.4, section 05, subsection 5 of the Federal Procurement Regulations (§ 1-3.405-5), would assign the section number "§ 2-3.405-5" to the implementing provisions.

Where material in the Federal Procurement Regulations (FPR) requires no implementation or deviation, there is no corresponding number in the agency regulations. Thus, there may be gaps in the sequence of numbers where the FPR, as written, are applicable to agency procurement.

ORGANIZATION

Title 41 is composed of thirteen volumes. The chapters in these volumes are arranged as follows: Chapter 1 (1-1 to 1-10), Chapter 1 (1-11 to App.)-2, Chapters 3-6, Chapter 7, Chapter 8, Chapter 9, Chapters 10-17, Chapter 18 (Volumes I, II, and III), Chapters 19-100, Chapter 101, and Chapter 102 to end.

For this volume Mildred L. Isler was Chief Editor. The Code of Federal Regulations publications program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.



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Title 41—Public Contracts and Property Management

(This book contains Chapter 8)

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AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 390; 38 U.S.C. 210, 40 U.S.C. 486(c).

Subpart 8-1.1—Introduction

SOURCE: 37 FR 28057, Dec. 12, 1972, unless otherwise noted.

§ 8-1.101 Scope of subpart.

This subpart establishes the Veterans Administration Procurement Regulations (VAPR), Chapter 8 of the Federal Procurement Regulations System (41 CFR Chapter 8) and states its relationship to the Federal Procurement Regulations (FPR) 41 CFR Chapter 1, and to instructions governing the procurement operations of the Veterans Administration.

§ 8-1.102 Purpose.

The VAPR is prescribed by the Administrator of Veterans Affairs to provide direction, control, and uniformity in the agency's procurement of personal property and nonpersonal services (including construction).

§ 8-1.103 Authority.

VAPR is issued under 5 U.S.C. 301, 38 U.S.C. 210 and 40 U.S.C. 486(c).

§ 8-1.104 Applicability.

(a) The FPR applies to the general procurement operations of the agency (including construction) as implemented and supplemented by the VAPR.

(b) The FPR and VAPR will not apply to purchases and contracts which utilize General Post Funds when such regulations would infringe on a donor's prerogative to specify the exact item to be purchased and the source of supply.

(c) The FPR and VAPR will apply to the special procurement programs authorized by Title 38, United States

Code (viz. Veterans Canteen Service and the Loan Guaranty programs), to the extent indicated in VAPR.

§ 8-1.105 Exclusions.

(a) Certain Veterans Administration procurement policies and procedures which come within the scope of this Chapter 8 nevertheless may be excluded therefrom when there is a justification therefor. These exclusions may include the following categories:

(1) Policies or procedures which are instituted on an experimental basis, or which are expected to be effective for a period of less than 6 months.

(2) Policies and procedures pertaining to other functions of the Veterans Administration as well as to procurement functions, where there is need to make the issuance available simultaneously to all Veterans Administration employees concerned.

(3) Speed of issuance is essential, numerous changes are required in chapter 8, and all necessary changes cannot be made promptly.

(b) Procurement procedures and instructions issued under paragraph (a) (2) and (3) of this section, will be codified into chapter 8 at the earliest practicable date, but in any event not later than 6 months from date of issuance.

§ 8-1.106 Issuance.

(a) Policies and procedures which directly affect the public will be published in the **FEDERAL REGISTER** as Chapter 8 of Title 41 of the Code of Federal Regulations. Related material, not affecting the public, may also be published in the **FEDERAL REGISTER** when its inclusion will provide a logical comprehensive statement of Veterans Administration procurement policies and procedures. Material published in Chapter 8C will not be published in the **FEDERAL REGISTER**.

(b) The **FEDERAL REGISTER** and Title 41 of the Code of Federal Regulations may be purchased by the public from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 8-1.107 Arrangement.

§ 8-1.107-1 General plan.

The VAPR conforms with the FPR system with respect to divisional arrangements into parts, subparts, sections, subsections, and further subdivisions as necessary.

§ 8-1.107-2 Numbering.

(a) Generally, the numbering system used in VAPR conforms to that of the FPR (see § 1-1.007-2 of this title). Thus, a particular procurement policy or procedure is identified by the same number in both the FPR and VAPR except that the first digit of the number is either 1 (FPR) or 8.

(b) Where Chapter 8 implements a part, subpart, section or subsection of the FPR, the implementing part, subpart, section or subsection of Chapter 8 will be numbered (and captioned) to correspond to the FPR part, subpart section or subsection, e.g., 8-1.302 "Procurement Sources" implements 1-1.302 of FPR. Paragraph and subparagraph designations of Chapter 8, however, are independently developed and do not necessarily correspond to a paragraph or subparagraph of the FPR.

(c) Where Chapter 8 supplements the FPR and thus deals with subject matter not contained in the FPR, the numbers in the group 50 through 99 are assigned to the respective supplementing parts, subparts or sections.

(d) Where the subject matter contained in the part, subpart, section or subsection of the FPR requires no implementation, Chapter 8 will contain no corresponding part, subpart, section or subsection. Thus, there will be gaps in the Chapter 8 series of part, subpart, section or subsection numbers.

§ 8-1.107-3 Citation.

(a) In formal documents, such as legal briefs, citations of Chapter 8 material which has been published in the **FEDERAL REGISTER** will be to Title 41 of the Code of Federal Regulations. If Chapter 8 material has not been published in the **FEDERAL REGISTER**, citation of such material in formal documents should give the number of the

part, subpart, or section of Chapter 8 following the words "Veterans Administration Procurement Regulations."

(b) Any section of Chapter 8, for purpose of brevity, may be informally identified as "VAPR" followed by section number. For example, this paragraph would be identified in a memorandum as "VAPR 8-1.107-3(b)".

§ 8-1.107-4 Cross references.

(a) Within Chapter 8, cross references to the FPR will be made in the same manner as used within the FPR. Illustrations of cross references to the FPR are:

(1) Part 1-3.

(2) Subpart 1-3.1.

(3) Section 1-3.413-5(a). The word "section" or its symbol (§) is used in making a cross reference even though the reference may be to a subsection, paragraph, or subparagraph. For example, this reference is actually to a paragraph.

(b) Within Chapter 8, cross reference to parts, subparts and sections of Chapter 8 will be in a manner generally similar to that used in making references to the FPR. For example this paragraph would be referred to as § 8-1.107-4(b).

§ 8-1.108 Relationship of the FPR to VAPR.

(a) Chapter 8 implements and supplements the FPR. Except as necessary to assure continuity or understanding, material published in the FPR will not be repeated, paraphrased, or otherwise restated in Chapter 8.

(b) Implementing material is that which expands upon related FPR material. Supplementing material is that for which there is no counterpart in the FPR.

(c) Material in Chapter 8 may supersede the FPR as when a deviation (see § 8-1.109-1) is authorized, but only when the deviation contains an explicit cross reference to the FPR.

(d) Where Chapter 8 contains no material implementing the FPR, the FPR will govern.

§ 8-1.109 Deviation.

§ 8-1.109-1 Description.

(a) The term "deviation" as used in the Chapter 8 is defined in the same manner as described in FPR 1-1.009-1.

(b) In order to maintain uniformity to the greatest extent feasible, deviation from the FPR and VAPR will be kept to a minimum and controlled as follows:

(1) Except for those programs for which special procurement authorities are contained in Title 38, United States Code, and for which procurements are negotiated under Subpart 8-3.2 of this chapter, authority to deviate from the FPR and Chapter 8, in individual cases, will be granted by the Director, Supply Service, or the Assistant Administrator for Construction.

(2) Authority to deviate from the VAPR in procurements effected under the special procurement authorities contained in Title 38, United States Code, in classes of cases will be secured from the Deputy Administrator.

(3) Authority to deviate from the FPR in classes of cases will normally be obtained in advance from General Services Administration. Where, in the judgment of the Director, Supply Service, circumstances preclude joint consideration with General Services Administration, he may recommend to the Deputy Administrator that authority be granted for such deviation, pending joint consideration at a later date. Normally, classes of cases requiring special treatment will be handled as revisions of this Chapter 8.

§ 8-1.109-2 Procedure.

(a) When contracting officers, other than those assigned to the Office of the Assistant Administrator for Construction, consider it necessary to deviate from the policies set forth in the FPR or VAPR, a request for authority to do so will be submitted to the Director, Supply Service. The request will clearly set forth the circumstances warranting the deviation and the nature of the deviation.

(b) Contracting officers assigned to the Office of the Assistant Administrator for Construction will, in individual cases, secure prior authorization

from the Assistant Administrator for Construction before any deviation is taken. A copy of each such authorization that is granted will be furnished the Director, Supply Service. Requests to deviate in other than individual cases will be processed as provided in paragraphs (d), (e), and (f) of this section.

(c) When a deviation in an individual case is authorized by either the Director, Supply Service, or the Assistant Administrator for Construction, the authorization will be filed in the purchase or contract file, whichever is appropriate. The Director, Supply Service, will review each deviation authorized and when considered necessary either prepare a change to the VAPR or recommend to the General Services Administration that the appropriate portion of the FPR be changed.

(d) Where deviations from the FPR in classes of cases are considered necessary, the Director, Supply Service, will prepare the submission to General Services Administration. Where circumstances preclude obtaining the prior concurrence of General Services Administration, and a deviation is authorized by the Deputy Administrator, the Director, Supply Service, will prepare a letter to General Services Administration stating the deviation authorized and the circumstances requiring the deviation. Deviations will be set forth in this Chapter 8 as provided in § 8-1.108(c).

(e) Where deviations from the VAPR are considered necessary in classes of cases for those procurements effected under Subpart 8-3.2 of this chapter, the Director, Supply Service, will review the request and forward it with his recommendation through channels to the Deputy Administrator. The deviation, if granted will be published in this Chapter 8.

(f) When a continuing deviation from the regulations in this Chapter 8 is requested, after authorization to deviate in an individual case has been granted, the Director, Supply Service, will forward the request with his recommendations, through channels, to the Deputy Administrator. The request, approved or disapproved, shall be returned through channels to the contracting officer. Such deviations

when approved will not be published in this Chapter 8. The contract files will, in each instance, be annotated to show that such authority has been granted.

§ 8-1.150 Use of designees.

Throughout the regulations in Chapter 8 responsibilities and duties are assigned to certain individuals by position title, and, in many instances, the submission of reports to and by these individuals is also prescribed. Whenever such titles are used the individual occupying such position may, unless otherwise restricted by law or the regulations in Chapter 8, designate a subordinate to act for him.

Subpart 8-1.2—Definition of Terms

§ 8-1.250 Personal services.

Services of an officially appointed or employed individual engaged in the performance of authorized Federal functions under the supervision and direction of a Federal officer and paid for on a time or contract price basis.

[30 FR 34, Jan. 5, 1965]

§ 8-1.251 Nonpersonal services.

Services rendered by non-Government firms, institutions or persons through contract or agreement with the Veterans Administration wherein no employee-employer relationship exists.

[30 FR 34, Jan. 5, 1965]

§ 8-1.252 Commodity standardization.

Commodity standardization is the process of selecting, testing, evaluating and approving items that are to be standardized for use in the Veterans Administration.

[33 FR 10456, July 23, 1968]

§ 8-1.253 Standard item.

A standard item is one that has, through the commodity standardization program, been selected and approved for use within the Veterans Administration by the appropriate Central Office department or staff head and published in VA Catalog No. 3, which is available at any Veterans Administration station.

[33 FR 10456, July 23, 1968]

Shall be type ———, grade ———, in accordance with (type of specification) no. ———, dated ——— and amendment ——— dated ———, except paragraphs ——— and ——— which are amended as follows.

[31 FR 15311, Dec. 7, 1966]

§ 8-1.305-2 Exceptions to mandatory use of Federal Specifications.

(a) Except for the monetary limitations, the exceptions to the mandatory use of Federal Specifications authorized by FPR 1-1.305-2 are not applicable to those items of real and personal property for which appropriate specifications are listed in section III of Veterans Administration Supply Catalog No. 3. When a deviation from a Federal Specification listed therein is required contracting officers shall, prior to taking procurement action, comply with the provisions of § 8-1.305-3.

(b) The exception to the mandatory use of Federal Specifications, with respect to purchases not exceeding \$10,000 authorized by FPR 1-1.305-2, does not apply to items purchased from GSA stock, or from a Federal supply schedule contract.

[35 FR 15756, Oct. 7, 1970, as amended at 42 FR 28541, June 3, 1977]

§ 8-1.305-3 Deviations from Federal Specifications.

(a) *Field station.* When a deviation from a Federal Specification is deemed necessary because of a specific requirement, the contracting officer will request such authority from the Director, Supply Service prior to procurement. The request will specify exactly how the station proposes to deviate from the current specification and why the particular deviation is essential to the station's operations. The contracting officer will be advised as to approval or disapproval of the request. If approved, the Director, Supply Service will, when necessary, forward the notice required by FPR 1-1.305-3(b) to the General Services Administration.

(b) *Marketing center.* When the essential needs of the Veterans Administration are not adequately covered by an existing Federal Specification, the

Chief of the Marketing Division concerned will:

(1) When the required deviation affects only the packing, packaging, marking or labeling, and the item is being purchased for depot stock, coordinating the deviation with the Director, VA Supply Depot, Hines, Ill., through the Director, VA Marketing Center. If, in the opinion of the Director, VA Supply Depot, the proposed deviation will not affect storage, handling or transportation he will advise the Director, VA Marketing Center, of his/her concurrence. The Director, VA Marketing Center, will then approve the deviation.

(2) When the deviation specified in paragraph (b)(1) of this section is for an item that is not being purchased for depot stock, document his/her reasons why the deviation is essential, and request the Director, VA Marketing Center, to approve the deviation. Initial deviations approved under paragraph (b)(1) of this section or this subparagraph will be reported to the Director, Supply Service, for submission to the General Services Administration.

(3) When the required deviation affects other than packing, packaging, marking, or labeling, coordinate the required deviation with the using service in Central Office. If approved by the using service, a request for authority to deviate will be submitted to the Director, Supply Service, through the Director, VA Marketing Center, Hines, Ill. It will specify in detail why the specific deviation is essential to the Veterans Administration's operations and be accompanied by a copy of the using service's comments. The appropriate marketing division chief will be advised as to the approval or disapproval of the request. If approved, the Director, Supply Service, will when necessary forward the notice required by FPR 1-1.305-3(b) to the General Services Administration.

[33 FR 6292, Apr. 23, 1968, as amended at 42 FR 28541, June 3, 1977]

§ 8-1.305-4 Optional use of interim Federal Specifications.

(a) Interim Federal Specifications, developed by VA, as indicated in the

Subpart 8-1.3—General Policies

§ 8-1.302 Procurement sources.

[28 FR 2328, Mar. 12, 1963]

§ 8-1.302-1 General.

(a) *General.* Procurement will be effected from the following sources in the descending order of priority indicated:

- (1) VA excess.
- (2) VA supply depot stocks.
- (3) Other Government agencies' excess.
- (4) Schedule of products made in Federal penal and correctional institutions.
- (5) Procurement list of products available from the Committee for Purchase from the Blind and Other Severely Handicapped.
- (6) GSA stock.
- (7) VA decentralized contracts.
- (8) Mandatory Federal supply schedule contracts.
- (9) Optional use Federal supply schedules.
- (10) Commercial concerns, educational or nonprofit institutions, as applicable.

(b) *Public exigency.* A source lower in priority may be utilized in a public exigency as defined in FPR 1-3.202. Justification for such deviation shall be included in the procurement file.

(c) *Military departments.* Items of supply available from the Inventory Control Points of the military departments may be obtained in accordance with FPMR 101-26 606.

(d) *Eligible beneficiaries.* When it is determined that a therapeutic benefit to eligible beneficiaries will result from personal selection of shoes, clothing and incidentals, acquisition from the Veterans Canteen Service or commercial sources is authorized. When dress shoes similar to Federal Prison Industries, Inc., Style No. 86-A are purchased from commercial sources, FPI Clearance No. 1206 will be cited on the purchase document.

[28 FR 2327, Mar. 12, 1963, as amended at 31 FR 16199, Dec. 17, 1966; 32 FR 5549, Apr. 5, 1967; 45 FR 13075, Feb. 28, 1980]

§ 8-1.302-2 Production and research and development pools.

Veterans Administration contracting officers will be advised of, consider bids from, and make awards to, Small Business and Defense Production Pools. The Chief Medical Director or designee will notify the appropriate departments and staff offices when such pools are approved.

[42 FR 28541, June 3, 1977]

§ 8-1.302-3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.

Excepting those contracts which pertain to the sale of manual arts and occupational therapy products, Veterans Administration Contracting Officers will, prior to entering into a contract with Government employees or business concerns substantially owned or controlled by Government employees, make the following written determinations, approved by the head of the station:

(a) The requirements of the Government cannot reasonably be otherwise supplied.

(b) There is neither a conflict of interest nor a potential conflict of interest in the performance of such contract. These determinations will be made a part of the contract file.

[31 FR 7820, June 2, 1966]

§ 8-1.303 Approval signatures.

Contracting officers or their duly authorized representatives will personally sign all contracts, changes thereto and contract enforcement correspondence. The signing of contractual documents will not be accomplished by facsimile stamps.

[28 FR 2328, Mar. 12, 1963]

§ 8-1.305 Specifications.

When product specifications are cited in an invitation for bids or requests for proposals, the citation shall include: (a) Desired options, (b) deviations authorized in accordance with § 8-1.305-3, listed in numerical sequence, and (c) shall conform to the following:

preamble, are mandatory under the same conditions and with the same exceptions as provided for Federal Specifications.

(b) Suggested changes to Interim Federal Specifications used on an optional basis will be handled as in § 8-1.305-3.

[28 FR 2329, Mar. 12, 1963, as amended at 30 FR 10293, Aug. 19, 1965]

§ 8-1.305-6 Military and departmental specifications.

(a) Veterans Administration Supply Catalog No. 3, section III, Index of Specifications, lists in addition to the Veterans Administration and Federal Specifications those military and departmental specifications that have been adopted by the Veterans Administration. The index lists the sources from which these specifications may be obtained and also establishes the segment of the Office of Procurement and Supply that is responsible for their development, maintenance, and revision. These specifications will be used in all applicable transactions and will not be deviated from except as provided in this section.

(b) The monetary exemption to the use of Federal Specifications contained in FPR 1-1.305-2(b) is equally applicable to Veterans Administration, military and departmental specifications. Contracting officers may, when they deem it to be advantageous to the Veterans Administration, utilize these specifications when procuring supplies and equipment costing less than \$10,000. However, when purchasing items of perishable subsistence, contracting officers shall observe only those exemptions set forth in paragraphs (f) and (g) of this section.

(c) When circumstances will not permit a field station to use a Veterans Administration specification without deviation, the contracting officer shall, prior to taking any procurement action, submit to the Assistant Deputy Administrator for Procurement and Supply, or Director, VA Marketing Center, Hines Ill., whichever is appropriate, a request for authority to deviate from the specification. The request will specifically detail the reasons why the deviation is essential to the station's operation. The approving au-

thority will coordinate the request with the using service in Central Office. The contracting officer will be advised as to the approval or disapproval of the request. If approved the letter of approval will be filed in the appropriate purchase or contract file.

(d) The Veterans Administration has adopted for use in the procurement of packinghouse products, the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS), and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for Veterans Administration use, are contained in VAPR Program Guide G-1, Federal Hospital Subsistence Guide. A copy of this guide and the IMPS may be obtained from any Veterans Administration contracting officer.

(e) Contract terms and conditions governing the procurement of subsistence items listed in VAPR Program Guide G-1 and IMPS are set forth in VA Form 10-1365. This form shall be attached to and made a part of each solicitation for such items when applicable.

(f) The military specifications for meat and meat products contained in VAPR Program Guide G-1 shall be used by the Veterans Administration only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in VAPR Program Guide G-1 may be used when purchasing either from DLA or from local dealers.

(g) Except as authorized in Subpart 8-14.1 of this chapter and VA Form 10-1365, contracting officers shall not deviate from the specifications contained in VAPR Program Guide G-1, and the IMPS without prior approval of the Assistant Deputy Administrator for Procurement and Supply.

(h) Items of meat, cured pork and poultry, not listed in either the VAPR Program Guide G-1 or the IMPS, will not be purchased without prior ap-

proval of the Assistant Deputy Administrator for Procurement and Supply.

(i) In the absence of mandatory documents, specifications or purchase descriptions of other agencies may be used by the various Marketing Divisions when appropriate. These specifications or purchase descriptions may be modified to meet the needs of the Veterans Administration. If repeated use of a modified specification or purchase description is required, the Director, VA Marketing Center shall consider converting it to a Veterans Administration specification.

(j) A field station may use a specification or purchase description of another agency without prior approval when the specification or description will, without modification, satisfy its needs. If, however, the specification or description must be modified to meet the station's needs, the procedure set forth in paragraph (c) of this section will be followed.

(k) The Director, Publications Service is responsible for developing, publishing, and distributing Veterans Administration specifications covering printing and binding.

(l) Veterans Administration specifications, as they are revised, are placed in stock in the Forms and Publications Depot. Station requirements of these specifications will be requisitioned from that source.

[36 FR 12215, June 29, 1971, as amended at 42 FR 28542, June 3, 1977; 47 FR 8777, Mar. 2, 1982]

§ 8-1.305-50 Government paper specification standards.

Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify the paper stocks to be used in buying printing, binding, or duplicating will require that such paper stocks be in accordance with the Government Paper Specification Standards issued by the Joint Committee on Printing of Congress.

[34 FR 12782, Aug. 6, 1969]

§ 8-1.305-51 Veterans Administration binding specifications.

(a) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases and boxes will be procured in accordance with GPO (Government Printing Office) specifications and will be procured from the servicing GPO Regional Printing Procurement Office for procurements exceeding \$500 or, when appropriate, from commercial sources (Subpart 8-5.53).

(b) There are three types of binding/rebinding:

- (1) Class A (hard cover);
- (2) Perfect (glued); and
- (3) Lumbinding (sewn).

The most suitable type of binding will be procured to satisfy the requirements, based upon the intended use of the bound material.

[47 FR 8777, Mar. 2, 1982]

§ 8-1.306 Standards.

[28 FR 2329, Mar. 12, 1963]

§ 8-1.306-1 Mandatory use and application of Federal standards.

(a) Requests for exceptions to Federal Standards not authorized by FPR 1-1.306-1(a) will be submitted with adequate justification to the Assistant Deputy Administrator for Procurement and Supply (93) for submission to General Services Administration.

(b) [Reserved]

(c) Federal standards do not preclude the use of existing Government stocks or acceptance of excess property not in full conformity with the standard items.

[28 FR 2329, Mar. 12, 1963, as amended at 28 FR 11455, Oct. 25, 1963; 29 FR 15574, Nov. 30, 1964; 31 FR 15312, Dec. 7, 1966; 47 FR 8777, Mar. 2, 1982]

§ 8-1.307 Purchase descriptions.

[33 FR 10931, Aug. 1, 1968]

§ 8-1.307-2 General requirements.

When a purchase description is used to describe required items of mechanical equipment, the invitation for bids or request for proposals will include the service data manual and guarantee clauses set forth in § 8-7.150-24.

[33 FR 10931, Aug. 1, 1968]

§ 8-1.307-6 Invitation for bids, "brand name or equal" descriptions.

The invitation for bids or request for proposals on mechanical equipment using "brand name or equal" purchase descriptions will, in addition to the clause required by FPR 1-1.307-6, contain the service data manual and guarantee clauses set forth in § 8-7.150-24.

[33 FR 10931, Aug. 1, 1968]

§ 8-1.311 Priorities, allocations, and allotments.

(a) Priorities, allocations, and allotments of critical materials are controlled by the Department of Commerce. Essentially such priorities, etc., are restricted to projects having a direct connection with supporting current defense needs. The Veterans' Administration does not possess and therefore, is not authorized to assign a priority rating to its purchase orders or contracts involving the acquisition or use of critical materials.

(b) In those instances where it has been technically established that it is not feasible to use a substitute material, the Department of Commerce has agreed to assist us in obtaining critical materials for maintenance and repair projects. They will also, where possible, render assistance in connection with the purchase of new items, which may be in short supply because of their use in connection with the defense effort.

(c) Contracting officers having problems in acquiring critical materials will ascertain all the facts necessary to enable the Department of Commerce to render assistance to the Veterans' Administration in acquiring, if possible, these materials. The contracting officer will submit a request for assistance containing the following information to the Chief Medical Director (134):

(1) A description of the maintenance and repair project, or, the new item, whichever is applicable.

(2) The critical material and the amount required.

(3) The contractor's source(s) of supply including address(es). If this source is other than the manufacturer or producer list the manufacturer or producer and address.

(4) The Veterans Administration contract or purchase order number.

(5) The contractor's purchase order number, if known, and the delivery time requirement as stated in the invitation or proposal.

(6) The additional time the contractor claims will be necessary to effect delivery if unable to get priority assistance.

(7) The extent of the emergency that will be generated at the station, e.g., (i) damage to the physical plant, (ii) impairment of the patient care program, (iii) creation of safety hazards and (iv) any other pertinent condition that will result because of failure to secure assistance in obtaining the critical materials.

(8) The item(s) required is for use in a construction contract which was authorized by the Assistant Administrator for Construction to be awarded and administered by the station contracting officer.

[32 FR 7267, May 16, 1967, as amended at 33 FR 10931, Aug. 1, 1968; 43 FR 6091, Feb. 13, 1978]

§ 8-1.315 Use of liquidated damages provisions in procurement contracts.

[34 FR 2309, Feb. 18, 1969]

§ 8-1.315-2 Policy.

Liquidated damages provisions will not be routinely included in supply or construction contracts, regardless of dollar amount. The decision to include liquidated damages provisions will conform to the criteria in FPR 1-1.315-2. In making this decision, consideration will be given as to whether the necessity for delivery or performance as stated in the contract schedule is so imperative that a probable increase in contract cost is justified. Liquidated damages provisions will not be included as insurance against selection of a nonresponsible bidder, as a substitute for efficient contract administration, nor as a penalty for failure to perform on time.

[34 FR 2309, Feb. 18, 1969]

§ 8-1.315-3 Contract provisions.

(a) *Contracts for equipment, supplies, or services (other than construction).* When a decision has been made

to include liquidated damages provisions, the following clause will be inserted immediately following the clause required by FPR 1-1.315-3:

RATE OF LIQUIDATED DAMAGES

In the case of failure on the part of the Contractor to complete delivery or performance within the time fixed in the contract or any extension thereof, the Contractor will pay to the Government as liquidated damages, pursuant to Article 11(f) of Standard Form 32, General Provisions (Supply Contract) (as amended above), the sum of \$——¹ for each calendar day of delay.

(b) *Contracts for construction.* The clause contained in FPR 1-18.110(a) will be used when liquidated damages provisions are included in the invitation for bids.

(c) *Partial performance and acceptance.* When partial performance may be accepted and utilized to the advantage of the Government, a provision, substantially as follows, will be included in the invitation for bids:

If any unit of the work contracted for is accepted in advance of the whole, the rate of liquidated damages assessed will be in the ratio that the value of the unaccepted work bears to the total amount of the contract. If a separate price for unaccepted work has not been stated in the contractor's bid, determination of the value thereof will be made from a schedule of cost furnished by the Contractor and approved by the Contracting Officer, or as otherwise stated in the contract.

[34 FR 2309, Feb. 18, 1969]

§ 8-1.316 Time of delivery or performance.

[28 FR 2329, Mar. 12, 1963]

§ 8-1.316-5 Time of delivery clauses.

When delivery is required by or on a particular date, the time of delivery clause set forth in FPR 1-1.316-5 as it relates to f.o.b. destination contracts will state the delivery date specified is the date by which shipment is to be delivered, not the shipping date. On f.o.b. origin contracts, the clause will state that the date specified is the date shipment is to be accepted by the carrier.

[37 FR 18729, Sept. 15, 1972]

¹Insert the daily rate of liquidated damages.

§ 8-1.317 Noncollusive bids and proposals.

(a) The head of a field station, Director, Veterans Administration Supply Depot, and the Director, Veterans Administration Marketing Center, Hines, Ill., are authorized to make the determinations set forth in paragraph (d) of the certification required by FPR 1-1.317(a).

(b) The Assistant Administrator for Construction, Manager, Administrative Services and the Director, Supply Service are authorized to make these determinations for the Central Office purchasing activities under their respective jurisdictions.

[32 FR 3772, Mar. 7, 1967, as amended at 42 FR 28542, June 3, 1977]

§ 8-1.318 Disputes clause.

[34 FR 852, Jan. 18, 1969]

§ 8-1.318-1 Contracting officer's decision under a disputes clause.

(a) When a dispute cannot be settled by agreement and a final decision under the disputes clause of the contract is necessary, the contracting officer shall furnish the contractor his/her final decision in the matter.

(b) The decision must be identified as a final decision, be in writing, and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. It will normally be in the form of a statement of the claim or other description of the dispute with necessary references to the pertinent contract provisions. It will set forth those facts relevant to the dispute, with which the contractor and the contracting officer are in agreement and, as clearly as possible, the area of disagreement.

(c) The decision shall, in addition to the material required by FPR 1-1.318-1 (a), contain the following:

The Veterans Administration Contract Appeals Board (VACAB) is the authorized representative of the Administrator for hearing and determining such disputes. The rules of the VACAB are published in § 1.774, Title 38, Code of Federal Regulations.

(d) The contracting officer's final decision will be forwarded to the con-

tractor by certified mail, return receipt requested.

(e) An appeal must be mailed or otherwise furnished by the contractor within 30 days from the date the decision of the contracting officer is received. Any request for an extension of the 30-day appeal period will be denied by the contracting officer.

[34 FR 852, Jan. 18, 1969, as amended at 38 FR 4511, Feb. 15, 1973; 42 FR 28542, June 3, 1977]

§ 8-1.318-50 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, that officer will endorse thereon the date of mailing (or date of receipt, if otherwise conveyed), and within 10 days will forward said original notice of appeal and a copy of the contracting officer's final decision letter to the Veterans' Administration Contract Appeals Board (VACAB). Copies of the notice of appeal and the final decision letter will be transmitted concurrently to the Director, Supply Service (134C), and Assistant General Counsel (025). (In cases of construction contracts administered by the Office of Construction, copies of appeal and final decision letter need not be transmitted to the Director, Supply Service.)

[43 FR 6091, Feb. 13, 1978]

§ 8-1.318-51 Preparation, contents and forwarding of appeal file.

Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer will assemble and transmit to the VACAB, through the Office of General Counsel (025), an appeal file consisting of all documents pertinent to the appeal, including:

(a) The decision and findings of fact from which the appeal is taken.

(b) The contract, including specifications and pertinent amendments, plans and drawings.

(c) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued.

(d) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of

any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the VACAB.

(e) Any additional information considered pertinent.

[43 FR 6091, Feb. 13, 1978]

§ 8-1.327-5 Procedures.

The pertinent agency rules and regulations required to be furnished to contractors by FPR 1-1.327-5 consist of VA Regulations 575 through 584 (38 CFR 1.575 through 1.584) and VA Manual MP-1, Part II, Chapter 21 (40 FR 44298).

[42 FR 28542, June 3, 1977]

Subpart 8-1.4—Procurement Responsibility and Authority

SOURCE: 39 FR 38376, Oct. 31, 1974, unless otherwise noted.

§ 8-1.402 Authority of contracting officers.

(a) Contracting officers are designated in Subparts 8-75.1 and 8-75.2.

(b) Personnel, other than those designated in Subparts 8-75.1 and 8-75.2, may determine quality, quantity and delivery requirements for items or services to be purchased. However, under no circumstances will individuals who have not been delegated contracting authority commit the Government for purchases of supplies, equipment or services. Individuals making such commitments may be held financially liable for the amount of the obligation.

[34 FR 2309, Feb. 18, 1969]

§ 8-1.403 Requirements to be met before entering into contracts.**§ 8-1.403-51 Legal review.**

(a) The following categories of proposed contracts and agreements will be reviewed and concurred in by the General Counsel prior to execution:

(1) All fixed-price contracts involving \$200,000 or more in either appropriated or nonappropriated funds and indefinite quantity contracts where expenditures of \$200,000 or more can reasonably be expected. (For contracts

awarded by the VA Marketing Center, the dollar amount is \$500,000.)

(2) All negotiated contracts, including proposed Small Business Administration 8(a) contracts, for which it is anticipated that more than \$100,000 in appropriated or nonappropriated funds will ultimately be involved. (For contracts awarded by the VA Marketing Center, the dollar amount is \$200,000.)

(3) All proposed agreements and contracts coming within the purview of one or more of the following:

- (i) Contracts for insurance.
- (ii) Utility connection agreements involving \$50,000 or more.
- (iii) Utility service agreements involving \$50,000 or more.
- (iv) Contracts for management services involving \$50,000 or more.
- (v) Contracts for research or research and development involving \$50,000 or more.
- (vi) Automatic data processing equipment, when purchased from other than a Federal Supply Service contract, involving \$50,000 or more.
- (vii) All contracts for scarce medical specialist services.
- (viii) All contracts for the mutual use, or exchange of use, of specialized medical resources.
- (ix) Agreements with other Federal agencies involving the expenditures of Veterans Administration funds of \$5,000 or more.

(4) All proposed letter contracts and ensuing formal contracts involving expenditures of \$5,000 or more.

(5) Any proposed agreement that is unique, novel or unusual.

(6) Step One of two-step formally advertised procurements when the anticipated value is more than \$200,000 (and when approved in accordance with § 8-2.502).

(b) The review and concurrence of the General Counsel is also required for proposed change orders (including Proceed Orders), final decisions or settlement agreements by contracting officers imposing additional liability upon the Government amounting to 10 percent of the amount originally obligated or \$10,000, whichever is greater.

(c) In addition to the requirements of paragraphs (a) and (b) of this sec-

tion, the following require review and concurrence of the General Counsel:

(1) Changes or revisions to all contract clauses.

(2) Changes or revisions to prescribed Veterans Administration contract forms.

(d) In addition to meeting the legal review requirements of paragraphs (a), (b), and (c) of this section, solicitations and contracts awarded and administered by the Office of the Assistant Administrator for Construction also require prior legal review by the General Counsel in the situations outlined below. Requests for review will be made after an examination of all pertinent facts has been made and recorded by the contracting officer.

(1) Protests against award (FPR 1-12.407-8 and § 8-2.407-8).

(2) Terminations, including final decision (cure) letters (FPR 1-8.6); disputes (§ 8-1.318-1) and claims in excess of \$25,000.

(3) Assignment of claims (FPR 1-30.700 and § 8-30.706).

(4) Substantive modifications, including proceed orders, of contracts (FPR 1-1.219). For purposes of this paragraph any modification or proceed order which may result in a change in the contract price of more than \$25,000 or any modification or proceed order granting a time extension of more than 20 days, will be deemed substantive.

(5) Proposed awards to other than the low evaluated bidder (FPR 1-2.404 and § 8-2.404-2).

(6) Proposed no-awards for reasons other than excessive prices (FPR 1-2.404 and § 8-2.404).

(7) Proposed consideration of late bids (FPR 1-2.201), late offers (FPR 1-3.802-1) and later modifications of bids (FPR 1-2.305), when it is anticipated that the circumstances involved may result in protest.

(8) Findings and determinations to support negotiations for contracts over \$100,000 (FPR 1-3.3 and § 8-3.303).

(9) Determinations of nonresponsibility (FPR 1-1.1204 and § 8-1.1205) and nonresponsiveness (FPR 1-2.301 and § 8-2.301).

(e) When legal assistance is requested by the Office of the Assistant Ad-

ministrator for construction, the contracting officer will brief the General Counsel regarding the facts and points of issue to facilitate prompt resolution.

(f) With regard to solicitations and contracts awarded and administered by the Office of the Assistant Administrator for Construction, the General Counsel will be requested to participate in conferences where it is expected that legal problems or contract provisions will be considered, and in meetings attended by legal representatives of private parties or other Government agencies. Assigned procurement counsel will be requested to participate in the drafting of correspondence involving controversial or sensitive contractual matters of a significant nature.

(g) Excluded from these legal review requirements are:

(1) Agreements, licenses, easements, or deeds dealing with management, sale, or lease of properties acquired by the Veterans Administration as a result of liquidation of guaranteed, direct, acquired or vendee loans.

(2) Orders or contracts for procurement of leased telecommunications systems, letter orders to GSA (General Services Administration) for services on ARS (Federal Telecommunications System-Advanced Record System), installation of and changes to telephone PBX systems at individual Veterans Administration locations or orders issued under GSA area-wide contracts with the American Telephone and Telegraph Company and local telephone companies.

[39 FR 38376, Oct. 31, 1974, as amended at 46 FR 22896, Apr. 22, 1981; 46 FR 24183, Apr. 30, 1981]

§ 8-1.403-52 Processing for legal review.

(a) *Department of Medicine and Surgery field stations, VA Marketing Center, VA Supply Depots.* (1) Proposed contracts or agreements specified in paragraph (a) (1), (2), (3) (iii) through (vi), (4), (5) and (6) of § 8-1.403-51 will be forwarded by the contracting officer directly to the Assistant Deputy Administrator for Procurement and Supply. The Assistant Deputy Administrator for Procurement and Supply will review the sub-

missions and forward them directly to the General Counsel.

(2) Proposed sharing agreements and contracts for specialized medical services specified in paragraph (a)(3) (vii) and (viii) of § 8-1.403-51 will be forwarded to Central Office in accordance with § 8-3.204(d) for review and submission to the General Counsel.

(3) Proposed interagency agreements specified in paragraph (a)(3)(ix) of § 8-1.403-51 will be forwarded by the approving official to the Assistant Deputy Administrator for Procurement and Supply. The Assistant Deputy Administrator for Procurement and Supply will review the submissions and forward them directly to the General Counsel.

(4) Proposed utility connection agreements specified in paragraph (a)(3)(ii) of § 8-1.403-51 will be forwarded by the contracting officer directly to the Director, Engineering Service. The Director, Engineering Service will review the submissions and forward them to the General Counsel through the Assistant Deputy Administrator for Construction.

(5) Proposed change orders specified in paragraph (b) of § 8-1.403-51 will be forwarded by the contracting officer directly to the Director, Engineering Service. The Director, Engineering Service, will review the submissions and forward them to the General Counsel.

(6) Proposed final decisions or settlement agreements specified in paragraph (b) of § 8-1.403-51 will be forwarded by contracting officer directly to the Assistant Deputy Administrator for Procurement and Supply. The Assistant Deputy Administrator for Procurement and Supply will review the submissions and forward them to the General Counsel.

(7) Proposed revisions to contract clauses specified in paragraph (c) of § 8-1.403-51 will be forwarded by contracting officer directly to the Assistant Deputy Administrator for Procurement and Supply. If concurred in, the Assistant Deputy Administrator for Procurement and Supply will forward them directly to the General Counsel.

(b) *Department of Veterans Benefits field stations.* (1) All proposed State

reimbursement contracts and Guidance Center and Vocational Rehabilitation contracts which are anticipated to ultimately involve the expenditure of \$100,000 or more will be forwarded by the contracting officer directly to the Director, Vocational Rehabilitation and Counseling Service, for review and approval. The Director, Vocational Rehabilitation and Counseling Service, will review the submissions and forward them to the General Counsel.

(2) Any other proposed agreement or contract specified in paragraph (a) of § 8-1.403-51 will be forwarded by the station Director to the appropriate Area Field Director for coordination with Director(s) of the concerned service(s) and submission to the General Counsel.

(3) Any other element of contracting falling within paragraphs (b) and (c) of § 8-1.403-51 will be processed in accordance with paragraph (b)(2) of this section.

(c) *Central Office.* Any element of contracting prescribed for legal review in § 8-1.403-51 originating in Central Office will be submitted for legal review by the contracting officer, or approving official in the case of agreements with other Government agencies, in accordance with department and staff office instructions.

[39 FR 38376, Oct. 31, 1974, as amended at 46 FR 22896, Apr. 22, 1981; 46 FR 60824, Dec. 14, 1981]

§ 8-1.403-53 Documents to be submitted for review.

The following documents are to be submitted:

(a) For proposed construction contracts, a copy of all solicitation documents, excluding drawings. These documents will be submitted no later than at the time they are furnished to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are furnished to prospective bidders.

(b) For sharing agreements and scarce medical specialist contracts, the documents referred to in § 8-3.204(e).

(c) For all other proposed contracts and agreements, a copy of the documents to be used in the solicitation and/or award of contract, including

any other documents which support the proposed procurement action, e.g., determination and findings in the case of negotiated procurement. Solicitation documents (e.g., IFB's, RFP's) will be submitted no later than at the time they are mailed to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are mailed to prospective bidders.

[39 FR 38376, Oct. 31, 1974, as amended at 40 FR 43217, Sept. 19, 1975]

§ 8-1.403-54 Certification by reviewing official.

In submitting proposed agreements or contracts received from field stations to the General Counsel, the Central Office reviewing officials will state on the transmittal memorandum or within the file that the proposal conforms to the Federal Procurement Regulations and Veterans Administration Procurement Regulations.

§ 8-1.403-55 Results of General Counsel's review.

(a) Upon completion of the review, the General Counsel will advise the appropriate Central Office activity or contracting officers as to whether the proposal was approved as submitted or provide them with the recommended changes. The appropriate Central Office activity will advise the contracting officer as to whether (1) the submission was approved as is, or (2) provide a copy of the changes required. Where changes are required, the contracting officer will take immediate action to amend the solicitation document.

(b) The General Counsel's review will be completed as expeditiously as possible, with due regard to those procurement actions where circumstances dictate an unusually short period for completing procurement action.

[39 FR 38376, Oct. 31, 1974, as amended at 40 FR 43217, Sept. 19, 1975]

§ 8-1.403-60 Technical review.

Certain contracts not subject to the legal review requirements of § 8-1.403-51 are subject to a prior technical

review for compliance with procurement regulations as provided in this section. Negotiated contracts, including 8(a) set-asides, expected to exceed \$50,000, formally advertised contracts (including Step One of two-step procurements) expected to exceed \$100,000, and all consignment agreements, regardless of anticipated dollar value, will be reviewed by the Assistant Deputy Administrator for Procurement and Supply, prior to award, except that the requirement for review is not applicable to contracts related to the Loan Guaranty Program, formally advertised construction contracts, architect-engineer contracts or to contracts awarded by the Office of Construction.

(a) The procedure for obtaining the technical review will be the same as that specified for legal review in § 8-1.403-52 except that where paragraphs (b) and (c) of that section indicate submission of documents to the General Counsel, the documents will be forwarded to the Assistant Deputy Administrator for Procurement and Supply.

(b) The documents to be submitted for review are the same as for legal review as specified in § 8-1.403-53.

(c) Upon completion of the technical review, the Assistant Deputy Administrator for Procurement and Supply will advise the appropriate Central Office activity (for field station contracts) or contracting officer (for Central Office contracts) as to approval or as to any changes required to comply with procurement regulations. Where changes are required, immediate action will be taken to amend the solicitation or proposed contract.

(d) The technical review will be completed as expeditiously as possible with due regard to the date by which the contract is needed. Conversely, contemplated effective dates of proposed contracts will take into consideration the need for technical review.

[46 FR 60824, Dec. 14, 1981]

§ 8-1.401 Selection, designation and termination of designation of contracting officers.

[41 FR 51018, Nov. 19, 1976]

§ 8-1.404-2 Designation.

(a) When an employee's qualifications are established by his/her supervisor and the individual is to be designated as a contracting officer in accordance with § 8-75.101(b), VA Form 90-2267, Certificate of Designation (Contracting Officer), will be issued for display in the employee's working area. The certificate will be signed by the next higher superior who fills one of the positions listed under § 8-75.101(a). (Existing designations will be confirmed by issuance of VA Form 90-2267.)

(b) The appointee's class title of position will be shown in the space beneath the printed title "Contracting Officer" on the Certificate of Designation. Any limitations on the scope of the authority to be exercised by the contracting officer, other than those contained in existing regulations, and the name of the station and organization will be entered in the space provided on the face of the certificate.

[41 FR 51018, Nov. 19, 1976, as amended at 42 FR 13828, Mar. 14, 1977; 46 FR 22897, Apr. 22, 1981]

§ 8-1.404-3 Termination of designation.

(a) Designations will remain effective, unless revoked sooner, until the contracting officer is reassigned or employment is terminated.

(b) A new Certificate of Designation will be issued and the old certificate terminated when there is any change in the contracting officer's grade and corresponding class title of position or limitation of authority.

[41 FR 51018, Nov. 19, 1976]

§ 8-1.405 Ratification of unauthorized contract awards.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom procurement authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, Chapters 1 and 8, Title 41, Code of Federal Regulations, and good procurement practice; e.g., certain requirements of law and regulation nec-

essary for the proper establishment of a contractual obligation may not be met; i.e., certification of the availability of funds, determinations, and findings, competition of sources, determination of contractor responsibility, certification of current pricing data, price-cost analysis, administrative approvals, negotiations of appropriate contract clauses, etc.

(1) Contracting officers shall not ratify contractual commitments made by other personnel of the Veterans Administration without prior approval. At field stations, the approving authority is the head of the field station concerned. For Central Office contracting officers, the approving authorities are the heads of the concerned departments and staff offices, and the Director, Office of Administration. This approval authority shall not be redelegated.

(2) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(i) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why the procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(ii) The contracting officer will review the file and forward it to the approving authority with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the approving authority will coordinate the request for ratification with the Office of General Counsel or the District Counsel, as appropriate.

(iii) If ratification is authorized, the file will be returned to the contracting officer for issuance of a purchase order or contract, as appropriate.

(b) In the case of otherwise proper contract awards made by contracting officers in excess of the limits of their delegated authority, the need for ratification will be brought to the attention of the head of the procuring activity. That individual will take such action as may be indicated to preclude future instances of such awards.

[40 FR 43217, Sept. 19, 1975, as amended at 46 FR 60824, Dec. 14 1981]

Subpart 8-1.5—Contingent Fees

SOURCE: 28 FR 2329, Mar. 12, 1963, unless otherwise noted.

§ 8-1.508 Enforcement.

§ 8-1.508-1 Failure or refusal to furnish representation and agreement.

In all cases of negotiated procurement where the SF 119 is required, the contracting officer will determine whether negotiations will be suspended pending receipt of the executed SF 119.

§ 8-1.508-2 Failure or refusal to furnish Standard Form 119.

The contracting officer will make the determinations required by FPR 1-1.508-2 (a) and (b).

§ 8-1.508-3 Misrepresentations or violations of the covenant against contingent fees.

(a) The determinations required by FPR 1-1.508-3 (a), (b), and (c) will be made by the Contracting Officer after he has presented the facts to and consulted with the Chief Attorney of the VA installation within whose jurisdiction the misrepresentation or violation has occurred. Contracting Officers in Central Office will consult with the Office of the General Counsel.

(b) The determination required by FPR 1-1.508-3(d) will be made by the Office of the General Counsel.

Subpart 8-1.6—Debarred, Suspended, and Ineligible Bidders

§ 8-1.600 Scope of subpart.

This subpart prescribes procedures for debarring or suspending bidders

and the establishment, use and maintenance of the Veterans Administration debarred, suspended, or ineligible bidders list.

[30 FR 4673, Apr. 10, 1965]

§ 8-1.602 Establishment and maintenance of a list of concerns or individuals debarred, suspended or declared ineligible.

The Director, Supply Service, is the debarring official for the Veterans Administration. The names of firms or individuals debarred will be included in an administrative issue entitled, "Debarred, Suspended, and Ineligible Bidders List," which will be maintained by the Director, Supply Service (134C). This list marked "for official use only" will be made available only to those Veterans Administration employees who require this information in the performance of their official duties.

[38 FR 10006, Apr. 23, 1973]

§ 8-1.602-1 Bases for entry on the debarred, suspended, and ineligible bidders list.

(a) The Director, Supply Service, may include on the debarred, suspended or ineligible bidders list those firms and individuals administratively debarred by another executive agency for the causes set forth in FPR 1-1.604 when it is known, or it is likely, that the firms or individuals will bid on Veterans Administration requirements.

(b) Any contracting officer having knowledge of a firm or individual(s) debarred by another agency may recommend that the firm or individual(s) be included on the Veterans Administration Debarred, Suspended and Ineligible Bidders List. Such recommendations will be supported by documentary evidence, other than the fact that the firm or individual(s) are included on another agency's list, to support their recommendation.

(c) Any contractor convicted of a criminal offense in connection with obtaining a Government contract, or in the performance of such contract, shall be debarred by the Veterans Administration and his name shall be entered on the debarred list. The Gener-

al Counsel, upon receipt of a notice of conviction, shall transmit such information to the Director, Supply Service (134C), for necessary action.

[38 FR 10006, Apr. 23, 1973]

§ 8-1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.

The Director, Supply Service, may authorize procurement from a firm or individual debarred or suspended by the Veterans Administration when requested by a contracting officer and when considered essential in the public interest under the circumstances permitted by FPR 1-1.603.

[37 FR 1234, Jan. 27, 1972]

§ 8-1.604-1 Procedural requirements relating to the imposition of debarment.

(a) *General.* The reply to the notification of a proposed debarment as required by FPR 1-1.604-1(a) will determine the action to be taken by the debarring official.

(1) *No reply received.* When no reply is received from the firm or individual(s) to the notification of intent to debar within the time limit stated in the notification, the case will be decided on the information available.

(2) *Reply received.* Where written information is received, but no hearing requested, such information will be taken into consideration in the final determination of the case.

(3) *Reply received and hearing requested.* When a hearing is requested, it shall be conducted by the Director, Supply Service, or a person designated by him. Hearings will normally be conducted in Washington, D.C. However, when a firm or individual being considered for debarment pleads inability to attend a hearing in Washington, D.C., the Director, Supply Service, may direct that the hearing be held at a point more convenient to all parties concerned.

(4) *Representation.* The firm or individual being considered for debarment may appear in person in the case of an individual, a corporation may be represented by an officer thereof, a partnership or joint venture by a member

thereof, or any of these by a duly authorized representative. The contracting officer recommending the debarment action will normally, at the discretion of the Director, Supply Service, be present at the hearing.

(5) *Scope of debarment.* The debarment will normally be Veterans Administration-wide and will cover all commodities or services supplied by the firm or individual(s). However, depending upon the circumstances, firms or individual(s) may be debarred for certain commodities or services, certain geographical areas, etc., as determined by the debarring official, based upon the evidence submitted or developed.

(6) *Period of debarment.* The period of debarment will be based upon the circumstances involved but will not, except in unusual circumstances, exceed a period of 3 years. The Director, Supply Service, may for those firms or individuals debarred by the Veterans Administration remove the debarment, reduce the period of debarment or amend the scope of the debarment, if indicated, after review of documentary evidence submitted by or in behalf of the contractor setting forth the appropriate grounds for granting of such relief. Such grounds may be, but are not limited to, newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management or the elimination of the cause for which debarment was imposed.

(7) *Notice of debarment.* (i) A written notice imposing debarment will be sent by certified mail, return receipt requested, to the firm or individuals by the Director, Supply Service. It will set forth the scope and period of debarment together with the circumstances upon which the debarment was based.

(ii) The imposition of debarment upon a firm or an individual by the Director, Supply Service, shall be final and conclusive except that the firm or individual so debarred may seek relief in a court of competent jurisdiction.

[30 FR 4673, Apr. 10, 1965, as amended at 31 FR 12718, Sept. 29, 1966; 31 FR 16199, Dec. 17, 1966; 32 FR 7912, June 1, 1967]

§ 8-1.605 Suspension of bidders.

The procedures in FPR 1-1.605 to 1-1.605-4, inclusive, will be used by the Veterans Administration in considering the suspension of a firm or individuals.

[31 FR 16199, Dec. 17, 1966]

§ 8-1.605-1 Causes and conditions under which executive agencies may suspend contractors.

A firm or individuals may be suspended only under the causes and conditions in FPR 1-1.605-1. Only the Director, Supply Service, may suspend a firm or individual.

[31 FR 16199, Dec. 17, 1966]

§ 8-1.605-4 Notice of suspension.

The notice of suspension shall be sent by certified mail, return receipt requested, to the firm or individuals. A suspension may be imposed upon the mailing of such notice. However, the firm or individuals may, at any time, submit information in opposition to such suspension and such information shall be considered.

[31 FR 16199, Dec. 17, 1966]

§ 8-1.606 Agency procedure.

Debarment or suspension action may be initiated by any contracting officer. The recommendation for debarment or suspension together with a statement of the cause or conditions (see FPR 1-1.604 and 1-1.605-1), suggested term of debarment or suspension and documentary evidence to support the recommendation will be submitted to the appropriate department or staff head. Pending disposition of the recommendation, no awards will be made to the firm or individual recommended for debarment or suspension. The department or staff head concerned will review the adequacy of the debarment or suspension request and transmit it to the Director, Supply Service (134C), with recommendations.

[38 FR 10006, Apr. 23, 1973]

Subpart 8-1.7—Small Business Concerns

SOURCE: 36 FR 25099, Dec. 29, 1971, unless otherwise noted.

§ 8-1.700 General.

This subpart sets forth the Veterans Administration small business program including section 8(a) contracts with SBA (Small Business Administration) and unilateral set-asides. It establishes responsibility for making such determinations, reviewing determinations and evaluation of the program.

[39 FR 32995, Sept. 13, 1974]

§ 8-1.702 Small business policies.

Procuring activities will further the Government's small business policies by considering set-aside procurements in accordance with the priorities established in FPR 1-1.706-1.

[46 FR 14126, Feb. 26, 1981]

§ 8-1.704 Agency program direction and operation.

§ 8-1.704-1 Program direction.

(a) The Assistant Deputy Administrator is designated the Director, Office of Small and Disadvantaged Business Utilization, and will be responsible for the overall supervision of the Veterans Administration Small and Disadvantaged Business Utilization Program in conformance with Sections 8 and 15 of the Small Business Investment Act of 1958. In carrying out that responsibility, technical support will be provided by the Office of Supply Services. Such report will include executing the agency-wide Small and Disadvantaged Business Utilization Program.

(b) The Assistant Administrator for Supply Services will assist departments and staff offices in developing their respective small business programs.

(c) The Deputy Assistant Administrator for Construction will develop and coordinate the agency small business program, as it affects construction projects, with the Assistant Administrator for Supply Services.

(d) The Director, Veterans Canteen Service (VCS), will designate an employee of his/her organization to serve as liaison between the VCS, the Small Business Administration, and the Office of Small and Disadvantaged Business Utilization on small business problems affecting the VCS.

(e) The Chief Memorial Affairs Director, Chief Benefits Director, Assistant Administrator for Construction, Assistant Administrator for Administrative Services, Director, VA Marketing Center and Directors of Veterans Administration field stations with Supply activities will designate an employee of their respective organizations to serve as a small and disadvantaged business specialist. This employee will be a full-time employee of the respective procuring activity, will be familiar with the supplies and services purchased at the activity, and will be fully cognizant of the regulations implementing the Small Business Act. The principal duties will include assisting the Small Business Administration Procurement Center Representative (when one is assigned) in activities and functions relating to Section 8 and 15 of the Small Business Act. The name, telephone number, and mailing symbol of each designee and any successor will be forwarded to the Director, Office of Small and Disadvantaged Business Utilization, through the Assistant Administrator for Supply Services.

[46 FR 14126, Feb. 26, 1981]

§ 8-1.704-2 Responsibility.

(a) Except as provided in paragraphs (b), (c), (d) and (e) of this section, the Assistant Administrator for Supply Services is responsible for the purchasing and contracting aspects of this program in connection with the procurement of supplies, equipment, and services. He/she is responsible for the compilation and submission of all reports required by the program.

(1) The Director, Procurement Service, Office of Supply Services, Central Office, is responsible for the purchasing, contracting and reporting aspects of this program as they apply to contracts and purchases made by his/her service. He/she is also responsible for

advising and counseling field station contracting officers in various facets of the small business program.

(2) The Director, VA Marketing Center; Directors, VA Supply Depots; and the Chiefs, Supply Service, at Veterans Administration field stations are responsible for the purchasing, contracting and reporting aspects of this program at their respective installations.

(b) The Assistant Administrator for Construction is responsible for the purchasing and contracting aspects of this program as they apply to (1) contracts awarded by a contracting officer assigned to his/her office, and (2) construction projects assigned by him/her to the Chief Medical Director for solicitation, award and administration of the resulting contract by a field station. When a small business set-aside award is made for a construction project under the jurisdiction of the Assistant Administrator for Construction, a copy of the memorandum of award will be forwarded to: Small Business Administration, Washington District Office, 1030-15th Street, NW., Room 250, Washington, DC 20417.

(c) The Assistant Administrator for Administrative Services is responsible for the purchasing and contracting aspects of this program as they apply to contracts to be awarded by:

(1) Building and Supply Service, Central Office; and

(2) Publications Service.

(d) The Chief Benefits Director is responsible for the purchasing and contracting aspects of this program as they apply to contracts to be awarded by the Department of Veterans Benefits.

(e) The officials named in paragraphs (b), (c), and (d) of this section are responsible for assuring that the semi-annual reports required by FPR 1-16.804-3 are prepared and submitted on the dates specified.

[36 FR 25099, Dec. 29, 1971, as amended at 39 FR 32995, Sept. 13, 1974; 46 FR 14126, Feb. 26, 1981]

§ 8-1.704-3 Program operations.

Each Veterans Administration contracting officer delegated contracting authority by Chapter 8, Title 41, Code

of Federal Regulations, a Central Office directive or other Veterans Administration Manual will take positive action to encourage participation in the program by small business entities and LSA (Labor Surplus Area) concerns. He/she will perform the following duties to execute a small business program and LSA program, as appropriate for his/her procurement activity.

(a) Develop a plan of operation to increase the share of contracts and purchase orders awarded to small business and LSA concerns.

(b) Promote the minority business enterprise program through the SBA 8(a) procedures set forth in § 8-1.713.

(c) Review the types and classes of items and services to be purchased to determine the applicability of small business and LSA set-asides or class set-asides.

(d) Plan for locating capable small business sources for current and future procurements.

(e) Develop adequate small business and/or LSA competition on all appropriate procurements.

(f) Make maximum utilization of the SBA small business source list (i.e., Procurement Automated Source System) when considering the disposition of all procurement requirements. Small business source lists are available through the SBA Regional Offices.

(g) Examine bidders lists to assure that small business firms are identified and adequately represented on all procurements.

(h) Assure that small business firms are identified on bid abstracts.

(i) Identify eligible LSA concerns.

(j) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent feasible.

(k) Assist and counsel small business firms with individual problems.

(l) Provide for counseling nonresponsive or nonresponsible small business bidders to help qualify them for future awards.

(m) Screen proposed large procurements to determine the possibility of separation or breakout of components suitable for purchase from small business firms or LSA concerns.

(n) Attend conferences and meetings publicizing the small business program.

(o) Insure that proposed procurements are publicized in the Commerce Business Daily.

(p) Assure preference to small business firms on multiple award Federal supply schedules.

(q) Promote the award of research contracts to small business and LSA firms.

(r) Promote goals for small business, small business set-asides, small business subcontracting. 8(a) procurements, labor surplus area set-asides, and purchases from women-owned businesses.

(s) Review all urgent and sole source procurements to determine that they are sparingly made, thoroughly documented and approved by the head of the procuring activity (see § 8-1.704-4(b)).

(t) If the contracting officer is assigned an SBA Resident Procurement Center Representative, assure that the representative is provided an opportunity and reasonable time to review any solicitation which meets the dollar threshold for which small business and small disadvantaged business subcontracting plans are required. Additionally, prior to the execution of any negotiated contractual document requiring a subcontracting plan, the total procurement package including the proposed subcontracting plan will be made available to the Resident Procurement Center Representative with a reasonable time allowed for review. The Procurement Center Representative may submit recommendations, which will be advisory in nature, to the contracting officer. The Procurement Center Representative will also be provided a copy of the subcontracting plan finally negotiated by the contracting officer. A copy of any subcontracting plan submitted pursuant to a formally advertised procurement will also be provided the Resident Procurement Center Representative upon execution of the contractual document.

(u) Assure that the small and disadvantaged business specialist notifies the SBA of the award of contracts, amendments, or modifications that contain subcontracting plans. The no-

tification will contain the contractor's name and address, place of performance, dollar amount, performance period, description of contract item or items, and name and address of the contracting officer. A copy of the award document is sufficient for these purposes. The notification will be sent to the Assistant Regional Administrator for Regional Programs in the SBA region where contract performance is to take place.

[46 FR 14127, Feb. 26, 1981]

§ 8-1.704-4 Definitions.

As used in this subpart the following terms have the following meanings:

(a) "Small business" means those firms meeting the criteria established in FPR 1-1.701 through 1-1.705, and those designated as small by the SBA.

(b) "Head of procuring activity" means the Director, Procurement Service, Central Office; Project Directors, Office of the Assistant Administrator for Construction; Director, Building and Supply Service, Central Office; Director, Publications Service, Central Office; Director, Monument Service, Central Office; Chiefs, Marketing Divisions, VA Marketing Center; and the Chief, Supply Service, at a field station.

(c) "Principal procurement officer" means the contracting officer in each procuring activity who has been delegated contracting authority in accordance with § 8-75.101(b), another VA Manual or Central Office directive.

[36 FR 25099, Dec. 29, 1971, as amended at 39 FR 32996, Sept. 13, 1974; 46 FR 14127, Feb. 26, 1981]

§ 8-1.706 Procurement set-asides for small business.

§ 8-1.706-1 General.

Each Veterans Administration contracting officer will consider all purchase requirements to be suitable for award to small business and/or LSA concerns unless there are supportable, compelling reasons why awards must be made to other than small business firms. The contracting officer will determine, in cooperation with an SBA procurement contact representative where possible, whether or not a par-

ticular procurement or class of procurements will be set aside, in whole or in part, for the priority set-aside programs specified in FPR 1-1.706-1. (Disputes between an SBA procurement contact representative and a contracting officer concerning set-aside decisions will be handled as set forth in § 8-1.706-2.) In the event an SBA procurement contact representative is not available, a unilateral determination will be made by the contracting officer. Each such determination will be reviewed by the head of the specific procuring activity (§ 8-1.704-4(b)) for approval or disapproval. Required documentation for set-aside determinations and circumstances requiring review of determinations by the Director, Office of Small and Disadvantaged Business Utilization, are prescribed in § 8-1.706-50 and § 8-1.706-51 respectively. (See FPR 1-4.1007 for application to the procurement of architect-engineering services.)

[46 FR 14127, Feb. 26, 1981]

§ 8-1.706-2 Review of SBA set-aside proposals.

When a recommendation is made by an SBA representative to set aside either an individual procurement or a class of procurements, the contracting officer will either accept or reject the recommendation. If rejected, the reasons therefor will be documented and submitted to the head of the procuring activity for review. If the rejection is upheld by the reviewing authority his/her decision, reduced to writing, will be transmitted to the SBA representative, for necessary action in accordance with FPR 1-1.706-2. Pending resolution of the dispute, procurement action will be suspended except as provided in FPR 1-1.706-2(a)(2).

[39 FR 32996, Sept. 13, 1974]

§ 8-1.706-3 Withdrawal or modification of set-asides.

Contracting officers may withdraw or modify an individual or class set-aside, only after compliance with the provisions of FPR 1-1.706-3.

§ 8-1.706-5 Total set-asides.

(a) When a total small business set-aside is made, one of the following

statements, as applicable, will be placed on the face of the solicitation for bids:

(1) Notice of total small business set-aside, page —, applies to all items in this solicitation.

(2) Notice of total small business set-aside, page —, applies to items — through — in this solicitation.

(b) When a total small business-LSA set-aside or a total LSA set-aside is made, one of the following statements, as applicable, will be placed on the face of the solicitation:

(1) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page —, applies to all items in this solicitation.

(2) Notice of total set-aside for small business concerns agreeing to perform as LSA concerns, page —, applies to items — through — in this solicitation.

(3) Notice of total set-aside for business concerns agreeing to perform as LSA concerns, page —, applies to items in this solicitation.

(4) Notice of total set-asides for business concerns agreeing to perform as LSA concerns, page —, applies to items — through — in this section.

(c) All proposed procurement for construction anticipated to cost between \$2,000 and \$1,000,000 and all proposed procurements for architect-engineer services for minor construction projects (\$2,000,000 and less) will be considered as though SBA had initiated a set-aside request. Determinations of the need to deviate from this policy made by the head of a procuring activity will require review by the Director, Office of Small and Disadvantaged Business Utilization, as prescribed in § 8-1.706-51.

[36 FR 25099, Dec. 29, 1971, as amended at 46 FR 14127, Feb. 26, 1981]

§ 8-1.706-6 Partial set-asides.

When, in accordance with the provisions of FPR 1-1.706-6, it is determined that a particular procurement will be partially set-aside for exclusive small business participation, the solicitation for bids will have, whichever of

the following statements is applicable, placed on the face page.

(a) Notice of partial small business set-aside, page ———, applies to Item ——— through Item ——— in this solicitation.

(b) Notice of partial small business set-aside, page ———, applies to all items in this solicitation.

§ 8-1.706-50 Documentation and record procurement request review.

(a) Each proposed procurement for construction anticipated to exceed \$2,000 and each proposed procurement of supplies or services anticipated to exceed \$2,500 shall be recorded on VA Form 07-2268 or 90-2268, Record of Procurement Request Review. Exempt from the requirements are procurements or requisitions from the sources listed in § 8-1.302-1, paragraphs (a)(1) through (a)(8).

(b) VA Form 07-2268 or 90-2268 shall be completed as follows:

(1) The information through Part I shall be completed by the individual working up the procurement. The "Procurement Control No." block will contain the purchase authorization number or requisition number. Additionally, the resulting contract number or purchase order number will be referenced in this block when it is established.

(2) Part II shall be completed by the contracting officer (unless the contracting officer is the person completing and signing Part I, in which case Part II may be disregarded).

(3) Part III shall be completed by the local SBA procurement contact representative, if one is assigned.

(4) Part IV shall be completed by the head of the procuring activity (see § 8-1.704-4(b)). In the event the head of the procuring activity overrules the recommendation specified in Part I, the reason(s) will be set forth on the reverse of the form.

(c) Distribution of the original and copies of the completed VA Form 07-2268 or 90-2268 shall be made as follows:

(1) Original: Maintained in purchase order filed with purchase order, or in the contract file, as applicable.

(2) Copy A: Maintained in jacket file in the contracting activity for infor-

mation purposes. The file should contain VA Form 07-2268 or 90-2268 recorded in the current and previous fiscal year. Disposal should be made of older forms in accordance with DM&S Records Control Schedule 10-1.

(3) Copy B: Submitted to the SBA procurement contact representative, if one is assigned. If an assigned SBA procurement contact representative is not available, this copy need not be made and the jacket file maintained in the contracting office will suffice for SBA review.

[46 FR 14128, Feb. 26, 1981]

§ 8-1.706-51 Required review by the Director, Office of Small and Disadvantaged Business Utilization.

(a) Transmittal of a copy of the pertinent VA Form 07-2268 or 90-2268, justification and documentation will be made by covering memorandum signed by the head of the procuring activity directly to the Director, Office of Small and Disadvantaged Business Utilization (96), when the head of the procuring activity determines that any of the following proposed procurements are not suitable for small business or LSA set-aside:

(1) Construction project under \$1,000,000.

(2) Any proposed procurement of architect-engineer services for minor construction projects (\$2,000,000, and less).

(3) Any proposed procurements for which there were predecessor contracts with small business or LSA firms, or three or more small business or LSA firms submitted bids or quoted prices on the prior procurement.

(4) Any proposed procurement for which there are three or more small business or LSA firms on the applicable bidder's mailing or small purchase source list, i.e., who have submitted an SF 129, Bidder's Mailing List Application, or have otherwise indicated a desire to compete in supplying the requirements of the purchasing activity.

(i) Small business firms whose names have been supplied by SBA in response to a request by the purchasing activity (see § 8-1.704-3) should be contacted before placing such firms on the bidder's mailing list. The purpose

of the contact is to ascertain the firm's intention to submit bids or quotations and its performance capabilities.

(ii) Nonset-aside determinations based upon past unsatisfactory performances by small business of LSA concerns will contain or have attached thereto such documentation as will permit a review of the current ability of three or more small business or LSA concerns to perform satisfactorily.

(b) In the case of proposed procurements subject to the review requirements of paragraph (a) of this section, no solicitation will be made pending notification of the results of the review.

(c) Should circumstances exist which preclude the forwarding of VA Form 07-2268 or 90-2268 by mail, telephone or telegraph communication is authorized.

[46 FR 14128, Feb. 26, 1981]

§ 8-1.708 Certificate of competency program.

§ 8-1.710 Subcontracting with small business concerns.

§ 8-1.713 Contracts with the Small Business Administration.

§ 8-1.713-1 Authority.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) authorizes the Veterans Administration to enter into contracts with the SBA. The latter agency is, in turn, authorized to enter into subcontracts with eligible concerns who are capable of performing these contracts.

[39 FR 32997, Sept. 13, 1974]

§ 8-1.713-2 Policy.

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of the Veterans Administration are appropriate for inclusion in this program, the contracting officer will make this fact known to the proper officials of the SBA regional office servicing his/her area. If the

certification required by paragraph (a) of this section is received, the Veterans Administration contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to the Veterans Administration, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between the Veterans Administration and SBA and will be administered by the Veterans Administration.

(d) In addition to meeting the requirements of sections 8-1.403-51(a)(2) and 8-1.403-60, contracting officers will secure cost and pricing data as prescribed in FPR 1-3.807-3 when negotiating contracts under the SBA 8(a) program. Contracts with an anticipated value of \$100,000 or more shall be processed for audit in accordance with § 8-1.807-3.

[39 FR 32997, Sept. 13, 1974, as amended at 46 FR 14128, Feb. 26, 1981]

§ 8-1.713-3 Procurement of supplies, services, and research and development.

(a) Contracts for supplies, equipment and services other than construction will be prepared as any other prime contract and in accordance with FPR 1-1.713-3.

(b) The Veterans Administration contracting officer will forward the prime contract to the SBA in sufficient numbers to furnish two copies to SBA and one copy to each subcontractor. SBA will return the signed original to the Veterans Administration contracting officer.

[39 FR 32997, Sept. 13, 1974]

§ 8-1.713-4 Procurement of construction.

Construction projects which have been selected for inclusion in this program will be contracted for as provided in this section and FPR 1-1.713-4.

(a) The contracting officer will submit, for each project so identified, the complete project listing including technical specifications, drawings and wage rates to the proper official of the appropriate SBA regional office. Should SBA select a competent sub-

contractor capable of performing the work, they will so certify to the Veterans Administration contracting officer. They will furnish him/her the name and complete address of the subcontractor(s), the project involved and the price(s) quoted. If the price quoted is within the range acceptable to the Veterans Administration, the contracting officer will indicate acceptance to the SBA.

(b) When the contracting officer received Standard Form 23, Construction Contract, signed by the SBA and the subcontractor, and the performance and payment bonds, the contracting officer will forward a notice to proceed to the subcontractor.

(c) In the event SBA or the contracting officer cannot locate an eligible concern capable of and willing to perform the work, the provisions of § 8-1.706-5 will be complied with.

[39 FR 32997, Sept. 13, 1974]

Subpart 8-1.9—Reporting Possible Antitrust Violations

§ 8-1.901 General.

Instances of possible antitrust violations will be reported by procurement activities in accordance with FPR 1-1.9 of the Chief Medical Director for review and submission to the General Counsel, who will determine whether or not to submit the case to the Attorney General.

[28 FR 11455, Oct. 25, 1963]

Subpart 8-1.10—Publicizing Procurement Actions

§ 8-1.1003 Synopses of proposed procurements.

[41 FR 3292, Jan. 22, 1976]

§ 8-1.1003-3 Special areas of negotiation.

To facilitate the use of alternative procedure in FPR 1-1.1003-3 for publicizing a proposed procurement of architect-engineer services in a daily newspaper circulated in the local area, contracting officers are hereby delegated authority to procure such paid advertising (see § 8-16.301-50).

[41 FR 3292, Jan. 22, 1976]

Subpart 8-1.11—Qualified Products

§ 8-1.1101 Procurement of qualified products.

(a) Federal Qualified Products Lists are lists of products qualified under the applicable Federal or interim Federal specification. Such lists may be used as authorized by the appropriate department or staff office. Requests to receive copies of existing Federal Qualified Products Lists will be submitted to the Assistant Administrator for Supply Services (93) for transmittal to General Services Administration. Requests to establish a Federal Qualified Products List for a commodity will be submitted to the Assistant Administrator for Supply Services (93) supported by one or more of the following justifications:

(1) The time required for testing after award would unduly delay delivery of the supplies being purchased.

(2) The cost of repetitive testing would be excessive.

(3) The tests would require expensive or complicated testing apparatus not commonly available.

(4) The interest of the Government requires assurance, prior to award, that the product is satisfactory for its intended use.

(5) The determination of acceptability would require performance data to supplement technical requirements contained in the specification.

(b) VA Qualified Products Lists are lists of products qualified by the VA under VA specifications or purchase descriptions. Such lists may be established as authorized by the appropriate department or staff office.

(1) VA Qualified Products Lists will be supported by one or more of the justifications in § 8-1.1101(a) or the following:

(i) Where tests result in substantial or repetitive rejections or

(ii) Where professional requirements of performance, balance, design, or construction cannot economically be developed into clear specifications, and professional judgment is required in determining the acceptability of items meeting VA requirements.

(2) In the event that the requirement for VA Qualified Products List is

established for any given product, known suppliers of the type of item required will be notified and given an opportunity to submit samples for inspection, and test based upon guarantee that they will deliver the item so inspected, provided the item is acceptable. A qualified products list shall not be used as a means of restricting competition to favored suppliers. All suppliers so desiring shall be given an opportunity to have their products tested for acceptability.

(3) Costs involved in the inspection and test will be borne by the VA. The supplier will be required to bear the cost of the sample and its transportation to the inspecting point. After inspection, the sample shall be returned to the supplier "as is" unless it is destroyed by inspection or disposed of or retained by the VA as authorized by the supplier.

(4) Items which have been accepted for the qualified products list will be subject to constant review for compliance with the applicable specification. Where there is a variance between the specification and the item, the supplier shall be requested to furnish an item that conforms to the specification. Failure or inability on the part of the supplier to provide an item that conforms to the specification will be sufficient cause to consider the item unacceptable in response to subsequent invitations.

(5) The acceptance of an item for the qualified products lists does not guarantee acceptance in any future purchase, nor does it constitute a waiver of the requirements of the specifications as to acceptance, inspection, testing or other provisions of any future contract involving such item.

(6) Bid invitations covering products which have been included in a qualified products list will include the clause set forth in FPR 1-1.1101(b). When purchase is made by negotiation, the clause in FPR 1-1.1101(b) may be appropriately modified.

[28 FR 2327, Mar. 12, 1963, as amended at 28 FR 11455, Oct. 25, 1963; 46 FR 28163, May 26, 1981]

§ 8-1.1102 Qualified products list for convenience/labor-saving foods.

(a) Each VA medical district's Dietetic Service representative is delegated authority to establish a common Qualified Products List for convenience/labor-saving foods for the use of medical centers within his/her respective district. The medical district Dietetic Service representative will notify the Director, Dietetic Service, VA Central Office, of the establishment of each Qualified Products List and amendments to each established list.

(b) Each medical center is authorized to use its district Qualified Products List. Each medical center may test food of its own choice, but will submit test results to the district Dietetic Service representative. The Dietetic Service representative will coordinate and consolidate the test results and recommendations of individual medical centers and with other medical centers within the district in order to avoid unnecessary duplication.

(c) The approved medical district Qualified Products List will be furnished each Supply office within the district. The Supply Services will have access to complete and accurate records of established Qualified Products Lists and all test results. These records will be made available to the Office of Supply Services (93C), VA Central Office, upon request.

[46 FR 28163, May 26, 1981]

Subpart 8-1.12—Responsible Prospective Contractors

SOURCE: 37 FR 613, Jan. 14, 1972, unless otherwise noted.

§ 8-1.1203 Minimum standards for responsible prospective contractors.

§ 8-1.1203-2 Additional standards.

Standards applicable to subsistence will be established based on preaward surveys prescribed in § 8-1.1205-4.

§ 8-1.1205 Procedures for determining responsibility of prospective contractors.

§ 8-1.1205-4 Preaward surveys.

(a) Preaward onsite evaluation will be made for contracts covering the products and services of bakeries, dairies, ice cream plants and laundries. A committee under the direction of the contracting officer and composed of representatives of the medical and using service appointed by the station head will inspect and evaluate the plant, personnel, equipment and processes of the prospective contractor. Prior to any inspection, the contracting officer will inquire whether the plant has been recently inspected and approved by another Veterans Administration station or Federal agency. Approved inspection reports of another Veterans Administration station will be accepted by Veterans Administration stations and approved inspection reports of other Federal agencies may be accepted as satisfactory evidence that the facilities of the bidder meet the requirements of the Invitation for Bid, provided inspection was made not more than 6 months prior to the purposed contract period.

(b) Preaward onsite evaluation of dairy plants will not be made by the Veterans Administration when acceptable bids are received from suppliers of those dairy products designated as No. 1 in the Federal Specifications. Suppliers must have received, prior to opening of bids, a pasteurized milk rating of 90 percent or more for the type product being supplied, on the basis of the U.S. Public Health Service milk ordinance and code. Such rating must be current (not over 2 years old), and will have been determined by certified State milk sanitation rating officer in the State of origin or by the Public Health Service and will continue at 90 percent or more during the period of the contract. Firms not so rated may only offer dairy products designated as No. 2 in the Federal Specifications. Award to such firms may be made only after completion of a preaward onsite evaluation conducted in accordance with paragraph (a) of this section.

(c) Prior to any open market purchase of fresh bakery products (such

as pies, cakes, cookies), the plant where these products are produced or prepared will be inspected and evaluated as provided in paragraph (a) of this section. Onsite evaluation will be made at least annually.

Subpart 8-1.13—Minority Business Enterprises

§ 8-1.1302 Agency programs.

The Administrator, in implementation of the desires of the President to enhance the sharing of the nation's minorities in the free enterprise system, has pledged the full participation of the Veterans Administration in achieving this goal. The VA Committee on Minority Business Enterprise establishes goals to be achieved by this agency in the award of contracts during each fiscal year. To achieve these goals, it is essential that contracting officers exercise their best efforts to determine which requirements can be channeled into this program.

[41 FR 32219, Aug. 2, 1976]

Subpart 8-1.15—Options

§ 8-1.1502 Use of options.

(a) All solicitations developed pursuant to Office of Management and Budget Circular A-76 cost comparisons will provide for two one-year renewal options as prescribed in the FPR, Subpart 1-1.15. Requests to use less than or more than this prescribed contract period for A-76 cost comparisons will be forwarded to the Assistant Deputy Administrator for Procurement and Supply (90).

(b) Each contract awarded with renewal options and which is subject to the Service Contract Act will use the clause prescribed in FPR 1-12.904-3.

[47 FR 15332, Apr. 9, 1982]

Subpart 8-1.16—Reports of Identical Bids

§ 8-1.1602 Definitions.

In addition to the definition contained in FPR 1-1.1602(b), a "line item" is further defined to provide that where a solicitation requires of-

ferors to show separate prices for individual items or elements but states that the award will be made in the aggregate or on the basis of the total price offered, the total amount of the offer will be considered as the line item susceptible to a separate contract award.

[33 FR 10456, July 23, 1968]

PART 8-2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 8-2.1—Use of Formal Advertising

Sec.

- 8-2.102 Policy.
- 8-2.104 Types of contracts.
- 8-2.104-3 Fixed price contracts with escalation.

Subpart 8-2.2—Solicitation of Bids

- 8-2.201 Preparation of invitations for bids.
- 8-2.202 Miscellaneous rules for solicitation of bids.
- 8-2.202-4 Bid samples.
- 8-2.203 Methods of soliciting bids.
- 8-2.203-1 Mailing or delivering to prospective bidders.
- 8-2.203-3 Publicity in newspapers and trade journals.
- 8-2.204 Records of invitations for bids and records of bids.
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- 8-2.301 Responsiveness of bids.
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- 8-2.303-6 Notification to late bidders.

Subpart 8-2.4—Opening of Bids and Award of Contract

- 8-2.402 Opening bids.
- 8-2.403 Recording of bids.
- 8-2.404 Rejection of bids.
- 8-2.404-1 Cancellation of invitation after opening.
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- 8-2.406 Mistakes in bids.
- 8-2.406-3 Other mistakes disclosed before award.
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Sec.

- 8-2.407 Award.
- 8-2.407-1 General.
- 8-2.407-3 Discounts.
- 8-2.407-8 Protests against award.
- 8-2.407-50 Award when only one bid is received.
- 8-2.408 Information to bidders.

Subpart 8-2.5—Two-step Formal Advertising

- 8-2.502 Conditions for use.

AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 390; 38 U.S.C. 210, 40 U.S.C. 486(c).

Subpart 8-2.1—Use of Formal Advertising

§ 8-2.102 Policy.

Contracts in excess of \$10,000 or in excess of \$1,000 for contracts made for repairs to property acquired by the Veterans Administration under chapter 37, title 38, United States Code, will be made by formal advertising when all of the following elements necessary to formal advertising are present.

(a) A complete, adequate and realistic specification or purchase description is available or can be written.

(b) There are two or more suppliers available who are willing and able to compete effectively for the contract.

(c) There is sufficient time to prepare the invitation completely setting forth the needs of the VA, the terms and conditions upon which it will do business and to complete the administrative determinations, including evaluation, essential to this type of procurement.

(d) The award can be made on the basis of price alone to a responsible and responsive bidder.

[28 FR 2333, Mar. 12, 1963, as amended at 40 FR 40803, Sept. 4, 1975]

§ 8-2.104 Types of contracts.

[28 FR 2333, Mar. 12, 1963]

§ 8-2.104-3 Fixed-price contracts with escalation.

When contracts of this nature are authorized (by Central Office) pursuant to § 8-3.403, contracting officers will be guided by the provisions of FPR 1-3.404-3.

[30 FR 4674, Apr. 10, 1965]

Subpart 8-2.2—Solicitation of Bids**§ 8-2.201 Preparation of invitations for bids.**

(a) Invitations for bids for supplies, equipment and services will be serially numbered at the time of issue. The number will consist of the station or marketing division number, the serial number of the invitation, and the fiscal year in which issued, e.g., 101-25-78. A new series beginning with the number 1 will be started each fiscal year. Invitations for bids for supplies, equipment and services which are issued, accepted, and become contracts in the same fiscal year but, because of procurement leadtime, will not be performed until the ensuing fiscal year will be numbered in the series of the year in which they are issued. However, invitations issued in one fiscal year that will result in a contract that will become effective and performed only in the ensuing fiscal year will be numbered in the ensuing fiscal year series.

(b) Invitations for construction contracts will bear the applicable specification number and project number if assigned. When no specification or project number is assigned, the invitation will be assigned a number in the current fiscal year series as provided in paragraph (a) of this section.

(c) In order to preclude adverse criticism of the Veterans Administration by prospective bidders relative to disclosure of bid prices prior to bid opening, the following provision will be prominently placed in all invitations for bids:

CAUTION TO BIDDERS—BID ENVELOPES

It is the responsibility of each bidder to take all necessary precautions, including the use of a proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, when it suits a purpose, use any suitable envelope, identified by the invitation number and bid opening time and date. If a bid envelope is not furnished, the bidder will complete and affix the enclosed Optional Form 17, Sealed Bid Label, to the lower left hand corner of the envelope used in submitting the bid.

(d) To realize the greatest possible price advantage for the Government, items that may be processed by a contractor to effect a reduction in cost factors such as production, inspection and delivery, may be listed for award on both individual item and summary item bases. Items will be listed individually and, in addition, a summary price will be solicited for those items the contracting officer determines to be of a related character and normally handled by a majority of prospective bidders.

(1) When different products are to be combined for a summary price, the quantity, unit and unit price columns opposite the summary item will be crossed out, e.g.:

(Item No.) Summary bid for furnishing items — to — inclusive on an all or none basis:

Quantity	Unit	Unit price	Amount
XX	XX	XX	

(Bidder will enter amount.)

(2) When a single unit price is solicited for a single product for delivery to various destinations, or for multiple deliveries, the total quantity required will be listed opposite the summary item, e.g.:

(Item No.) Summary bid for furnishing items — to — inclusive on an all or none basis:

Quantity	Unit	Unit price	Amount
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(Bidder will enter unit price and amount.)

(3) Invitations containing a summary bid request will contain the following statement:

The award will be made on either an individual item basis or summary bid basis, whichever results in the lowest cost to the Government. Therefore, to assure proper evaluation of all bids, a bidder quoting a summary bid price must also quote a price on each individual item included in the summary bid price.

(e) Bid invitations for supplies, equipment, or services (other than construction) must define the extent to which alternate bids will be author-

ized and considered. Alternates specified on construction projects will be considered for acceptance only as a part of the basic item.

(1) When an alternate item is to be considered only if no bids or insufficient bids are received on the item desired, the following will be included in the invitation:

ALTERNATE ITEM(S)

Bids on (1) will be considered only if acceptable bids on (2) are not received or do not satisfy the total requirement.

¹ Contracting officer will insert an alternate item that is considered acceptable.

² Contracting officer will insert the required item and item number.

(2) When an alternate item will be considered on an equal basis with the item specified, the following will be included in the invitation:

ALTERNATE ITEM(S)

Bids on (1) will be given equal consideration along with the (2), and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of. ²

¹ Contracting officer will insert the alternate item(s) that are considered acceptable.

² Contracting officer will insert the desired item(s).

(3) In addition to the clause in subparagraph (1) or (2) of this paragraph, the following clause will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

ALTERNATE PACKAGING AND PACKING

The bidder's offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

(f) When a contracting officer determines that it will be advantageous to the Government to make the award by group or groups of items, a provision for such award will be included in the invitation for bids.

(1) This may apply when:

(i) The items in the group or groups are readily available from the sources to be solicited; and

(ii) It is desirable to make a minimum number of contracts; or

(iii) Furniture or fixtures are required for a single project and uniformity of design is desirable; or

(iv) The articles required will be assembled and used as a unit.

(2) Solicitations for supplies and services, other than construction, will contain the following provision:

AGGREGATE AWARD

The Veterans Administration reserves the right to make an award to the responsible bidder quoting the lowest aggregate price for all items, for any group of items, or on an item basis, whichever is more advantageous to the Government. Bids will be evaluated on the basis of additional cost to the Government that might result from making multiple awards. For this purpose, the cost of awarding and administering each additional contract is estimated to be \$——.¹

(3) Solicitations for construction contracts which solicit prices on an item and alternate item basis (when it is intended that a single aggregate award will be made for all items in the solicitation within certain fiscal limitations) will contain a statement as to the order of priority in which the alternate items will be awarded. This priority will be based on the relative importance of an item, the Veterans Administration estimate, and the amount of funds available. Such schedules will be substantially as follows:

Item No. 1—Furnish all labor, material, equipment, etc., to paint buildings No. 1, 2, and 3. \$——.

Alternate items in order of priority. Furnish all labor, material, equipment, etc. to paint:

Item No. 2—Building No. 1 only \$——.

Item No. 3—Building No. 2 only \$——.

Item No. 4—Building No. 3 only \$——.

A single award will be made on Item No. 1, but in the event the offer exceeds the funds available, a single award will be made on Item No. 2, or a combination of Items Nos. 2 and 3. Offerors should quote a price on each item listed.

[30 FR 8752, July 10, 1965, as amended at 33 FR 74, Jan. 4, 1968; 34 FR 5844, Mar. 28, 1969; 34 FR 7613, May 13, 1969; 34 FR 18801, Nov. 25, 1969; 39 FR 38377, Oct. 31,

¹Insert a dollar amount between \$100 and \$500, the exact amount to be determined by the contracting officer based upon the anticipated workload that would result from administering an additional contract.

Chapter 8—Veterans Administration

§ 8-2.205-2

1974; 43 FR 22032, May 23, 1978; 47 FR 26128, June 17, 1982]

§ 8-2.202 Miscellaneous rules for solicitation of bids.

[28 FR 2334, Mar. 12, 1963]

§ 8-2.202-4 Bid samples.

Where it has been determined that samples are necessary to the proper awarding of a contract the following subparagraph will be added to the provision in FPR 1-2.202-4(e):

BID SAMPLES

* * * * *

All samples furnished must be plainly marked with the complete lettering and numbering of the item or subitems to which it relates, the name of the commodity, the Invitation for Bids number, and the name of the bidder. Cases or packages containing samples must be plainly marked "Samples" and all charges incident to the preparation and transportation of samples must be prepaid by the bidder. Bids must not be enclosed with samples. (Par. 5(c), Submission of Offers of SF 33A, is supplemented accordingly.)

[41 FR 19318, May 12, 1976]

§ 8-2.203 Methods of soliciting bids.

[28 FR 2334, Mar. 12, 1963]

§ 8-2.203-1 Mailing or delivering to prospective bidders.

(a) The contracting officer will include either a bid envelope, or Optional Form 17, Sealed Bid Label, with each invitation for bids furnished to prospective bidders.

(b) SF 19, Invitation, Bid, and Award or SF 20, Invitation for Bids (Construction Contract) may be distributed 10 to 14 days prior to the issue of drawings and specifications.

[33 FR 75, Jan. 4, 1968]

§ 8-2.203-3 Publicity in newspapers and trade journals.

Except as provided in § 8-1.1003-3 and VA Regulations 3 and 4 (38 CFR 2.3 and 2.4), paid advertising for procurement of supplies, equipment, and services will be used only upon written approval of the Administrator. Each

request for approval will set forth the circumstances which preclude procurement being accomplished satisfactorily by normal advertising methods. The request will be submitted through channels and routed through the Assistant Deputy Administrator for Procurement and Supply (93), for preparation and appropriate recommendation to the Administrator. See §§ 8-3.210 and 8-16.301-50.

[41 FR 19318, May 12, 1976, as amended at 47 FR 26128, June 17, 1982]

§ 8-2.204 Records of invitations for bids and records of bids.

(a) A single register will be established and maintained by the issuing office on a fiscal year basis, for all solicitation by invitations for bid or requests for proposal number, date of issue, date of opening, commodity or service involved and disposition; i.e., contract number or purchase order number or, when applicable, no award.

(b) Maintenance of the contract file prescribed by § 8-1.313-54 and retention of canceled Invitation for Bid files will fulfill the requirements set forth in FPR 1-2.204.

[41 FR 19318, May 12, 1976, as amended at 43 FR 22032, May 23, 1978]

§ 8-2.205 Bidders mailing lists.

[41 FR 19318, May 12, 1976]

§ 8-2.205-1 Establishment of lists.

From the bidders mailing list applications received, each contracting activity will compile and keep current a Bidders Mailing List file. The lists will be maintained according to the commodity classification or group of items normally listed on the same invitation for bids.

[41 FR 19318, May 12, 1976]

§ 8-2.205-2 Removal of names from bidders mailing lists.

Except as provided for in FPR 1-2.205-2, no Veterans Administration Contracting Officer, or other employee, shall remove from the bidders mailing list the name of any prospective bidder.

[41 FR 19318, May 12, 1976]

§ 8-2.205-5 Release of bidders mailing list.

When invitations for bids for supply and service contracts have been issued, contracting officers may furnish, upon request of an individual or institution having a bona fide interest in such information, a list of the prospective bidders to whom invitations for bids were submitted. The provisions of FPR 1-2.205-5(b) will be observed with respect to invitations for bids for construction contracts.

[33 FR 75, Jan. 4, 1968]

Subpart 8-2.3—Submission of Bids

SOURCE: 28 FR 2334, Mar. 12, 1963, unless otherwise noted.

§ 8-2.301 Responsiveness of bids.

Where the timeliness of the submission of a bid, modification or withdrawal cannot be administratively determined in accordance with FPR 1-2.3, the matter will be submitted by the Contracting Officer direct to the Comptroller General for decision. The submission will include copies of all pertinent papers. A copy of each submission will be forwarded to the Assistant Deputy Administrator for Procurement and Supply (93).

[31 FR 12718, Sept. 29, 1966, as amended at 47 FR 26128, June 17, 1982]

§ 8-2.303 Late bids.

§ 8-2.303-2 Consideration for award.

All bids received by mail (or telegram where authorized), will be time and date stamped immediately upon receipt at the VA installation mail room and in the office of the addressee designated in the invitation. This will firmly establish the time of receipt of bids, or when bids are received in the office of the addressee subsequent to the time of opening, it will establish whether or not the delay was due to mishandling on the part of the VA.

§ 8-2.303-5 Hand-carried bids.

A bid hand-carried by the bidder or his agent, will be considered late unless delivered to the addressee designated in the bid invitation prior to the time set for opening.

§ 8-2.303-6 Notification to late bidders.

The notification to late bidders will specify the final date by which the evidence must be received to be considered. This date must be within the time allowed by the apparent low bidder for acceptance of his bid.

Subpart 8-2.4—Opening of Bids and Award of Contract

§ 8-2.402 Opening bids.

(a) The contracting officer shall serve as, or designate, a bid opening officer, and shall also designate a recorder.

(b) The form and amount of bid security and name of surety will be read aloud and recorded.

[28 FR 2334, Mar. 12, 1963, as amended at 39 FR 38378, Oct. 31, 1974]

§ 8-2.403 Recording of bids.

The information required for bid evaluation shall be recorded on an appropriate Abstract of Bids VA Forms 90-1286, 90-2232 (or 60-2232), or 08-6103. The evaluation data may be recorded on supplemental sheets or forms such as VA Form 10-2237b, Request for Dietetic Supplies, providing that such supplemental sheets or forms are covered by one of the forms authorized above for recording bid or price data. In addition to those instructions set forth in FPR 1-2.403, the bid opening officer shall certify on the abstract the date and hour at which the bids were opened. Where erasures, strikeouts, or changes in price are noted at the time of opening, a statement to that effect will also be included on, or attached to, the abstract or record of bids.

[35 FR 15756, Oct. 7, 1970, as amended at 47 FR 26128, June 17, 1982]

§ 8-2.404 Rejection of bids.

[28 FR 2334, Mar. 12, 1963]

§ 8-2.404-1 Cancellation of invitation after opening.

A copy of each invitation for bids which is canceled as provided for in FPR 1-2.404-1, together with the abstract showing to whom such bids

were sent, will be filed in a separate folder identified by the invitation number. Invitations for bids which result in no bids being received will be handled in like manner. In each instance the abstract will be annotated to show why an award was not made. These folders will be retained for the current and two succeeding fiscal years.

[33 FR 75, Jan. 4, 1968]

§ 8-2.404-2 Rejection of individual bids.

(a) When a bid that is being considered for an award is found to be incomplete, i.e., all pages of the invitation have not been returned by the bidder, the contracting officer will take whichever of the following actions is appropriate:

(1) Make a determination that the bid as submitted is in such a form that acceptance would create a valid and binding contract, requiring the contractor to perform in accordance with all of the material terms and conditions of the invitation. Such a determination may be based on the fact that the bid as submitted includes evidence that the offeror intends to be bound by all the material, terms and conditions of the invitation.

(2) Make a determination that the bid as submitted is in such form that acceptance would not create a valid and binding contract.

(b) When a single bid is received in response to a solicitation, the offer shall not be rejected simply because it specifies a bid acceptance time which is shorter than that contained in the solicitation, unless a compelling reason exists for rejecting such a bid. Insufficient time to properly evaluate an offer shall be considered a compelling reason for rejection; however, the contracting officer will first request the offeror to extend the acceptance date of the bid to allow for a proper evaluation.

NOTE: In those cases where more than one bid is received, an individual bid which is not in compliance with the Government's bid acceptance time shall be rejected as non-responsive since consideration of such an offer would unfairly disadvantage other bidders.

(c) Questions involving the responsiveness of a bid which cannot be resolved by the contracting officer may be submitted directly to the Comptroller General, accompanied by a copy of the pertinent documents. A copy of each submission will be forwarded to the Assistant Deputy Administrator for Procurement and Supply (93).

[35 FR 11471, July 17, 1970, as amended at 47 FR 26128, June 17, 1982]

§ 8-2.404-3 Notice to bidders of rejection of all bids.

The provisions in FPR 1-2.404-3 are applicable to a single line item or to all line items on the invitation.

[30 FR 4674, Apr. 10, 1965]

§ 8-2.406 Mistakes in bids.

[28 FR 2334, Mar. 12, 1963]

§ 8-2.406-3 Other mistakes disclosed before award.

(a) In accordance with the provisions of FPR 1-2.406-3(b), the authority of the Administrator to make the administrative determinations set forth in FPR 1-2.406-3(a) is hereby delegated, without power of redelegation, to the Assistant Deputy Administrator for Procurement and Supply (93). This delegation in no way impairs the delegations contained in Comptroller General Decision B122003, dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid prior to award, the contracting officer will, after complying with the provisions of FPR 1-2.406-3, submit the complete file to the Assistant Deputy Administrator for Procurement and Supply (93), for an administrative determination. Based upon the evidence submitted, the Assistant Deputy Administrator for Procurement and Supply (93), will determine the action to be taken by the contracting officer. This determination will, prior to its release to the contracting officer, be submitted to the General Counsel for approval. Pending receipt of the determination no award shall be made.

(c) When the Assistant Deputy Administrator for Procurement and Supply (93), based on the evidence

submitted, believes that the case should be submitted to the Comptroller General for decision, he/she will prepare the submission and forward it to the Comptroller General. The decision of the Comptroller General will be furnished to the contracting officer by the Assistant Deputy Administrator for Procurement and Supply (93). A copy of each such decision will be furnished to the General Counsel.

[35 FR 11472, July 17, 1970, as amended at 39 FR 33378, Oct. 31, 1974; 47 FR 26128, June 17, 1982]

§ 8-2.406-4 Disclosure of mistakes after award.

(a) When a contracting officer corrects a mistake in bid pursuant to FPR 1-2.406-4(a), a copy of the contract amendment or supplemental agreement together with a copy of the contracting officer's determination will be forwarded to the Assistant Deputy Administrator for Procurement and Supply (93).

(b) For mistakes in bid other than those specified in paragraph (a) of this section, the contracting officer's proposed determination, prepared in accordance with FPR 1-2.406-4, will be forwarded to the General Counsel (025) through the Assistant Deputy Administrator for Procurement and Supply (93). The approval and/or recommendations of the General Counsel and the Assistant Deputy Administrator for Procurement and Supply will be transmitted to the contracting officer by the Assistant Deputy Administrator for Procurement and Supply. The contracting officer will make the final determination as directed by the Assistant Deputy Administrator for Procurement and Supply. The contracting officer will transmit a copy of the signed final decision letter to the Assistant Deputy Administrator for Procurement and Supply (93).

(c) The Assistant Deputy Administrator for Procurement and Supply (93) will maintain the agency records of mistakes in bids after award, as required by FPR 1-2.406-4.

[47 FR 26128, June 17, 1982]

§ 8-2.407 Award.

[28 FR 2334, Mar. 12, 1963]

§ 8-2.107-1 General.

(a) Contracting officers will, prior to award of a contract for the purchase of a firm or indefinite quantity of supplies, equipment or services (excluding construction) at an actual or estimated cost of \$200,000 or more, forward to the Assistant Deputy Administrator for Procurement and Supply (93):

(1) By teletype on routine awards (no exceptions, protests or mistakes, etc.):

(i) Name and address of proposed awardee.

(ii) Amount of contract.

(iii) Statement of clean bid (no exceptions, protests or mistakes, etc.)

(iv) Contracting officer's determination of bidder's responsibility (history of performance with the Veterans Administration).

(2) On other than routine awards:

(i) A copy of the appropriate specification.

(ii) A copy of each bid received including any correspondence accompanying a bid.

(iii) Copies of correspondence received in lieu of a bid.

(iv) A copy of the abstract.

(v) Contracting officer's determination of bidder's responsibility.

(vi) Statement as to proposed inspection and testing to assure compliance with specifications.

(vii) Contracting officer's analysis of bids received and his/her determination as to the award.

(b) The Assistant Deputy Administrator for Procurement and Supply (93), on completion of his/her review, will inform the contracting officer whether an award should or should not be made. In the event an award is not recommended, the specific reason for such a decision will be furnished the contracting officer.

(c) Multiple bids submitted by one individual on his/her own behalf or on behalf of two or more companies, or by two or more affiliated companies, may be considered in making an award, provided the bids were not submitted:

(1) For the purpose of circumventing a law such as the Davis-Bacon Act or the Walsh-Healey Public Contracts Act, or

(2) For any other purpose which would be prejudicial to the United States or to other bidders.

(d) To preclude any bidder from gaining an unfair advantage through the submission of multiple bids which are equal in all respects to other low bids received under the same invitation for bids, only one such bid shall be considered in the award by lot. The selection of the bid (of the equal multiple bids received) to represent the person or firm, or affiliates thereof, shall be by lot.

[29 FR 12772, Sept. 10, 1964, as amended at 39 FR 17103, May 13, 1974; 39 FR 38378, Oct. 31, 1974; 47 FR 26128, June 17, 1982]

§ 8-2.407-3 Discounts.

(a) The contracting officer will, as provided in FPR 1-2.407-3, establish the minimum discount period that will be considered in evaluating offers for award. When this period is determined to be 10 days, this fact will be so stated in the solicitation. If, however, the period is determined to be in excess of 10 days, the following annotation will be inserted in block 16 of Standard Form 33 immediately following the word "payment": "See paragraph 9, Standard Form 33A."

(b) Invitations for bids or requests for proposals involving a trade-in will provide that when a prompt payment discount is offered the discount will be computed on the gross purchase price.

[33 FR 75, Jan. 4, 1968, as amended at 33 FR 14780, Oct. 3, 1968]

§ 8-2.407-8 Protests against award.

(a) *General.* When a protest against the award of a contract or a request from the General Accounting Office for an agency report relative to a protest against an award lodged with that agency is received in Central Office, the protest or request will be immediately forwarded to the Assistant Deputy Administrator for Procurement and Supply (93). Protests or requests concerning Central Office architect-engineer or construction contracts will be forwarded to the Assistant Deputy Administrator for Construction. The Assistant Deputy Administrator for Construction or Assistant Deputy Administrator for Pro-

curement and Supply, whichever is appropriate, will immediately notify the contracting officer, furnish him/her a copy of the protest, and request him/her to furnish the information required by FPR 1-2.407-8(a)(2). Should the circumstances warrant, the contracting officer will be advised to notify all parties involved in or affected by the protest and to secure from them their views as provided in FPR 1-2.407-8(a)(3), (b)(2), and (c).

(b) *Protest before award.* When a written protest has been lodged with the contracting officer, and he/she considers it desirable to do so, he/she may obtain the views of the Comptroller General. The submission will be made direct to the Comptroller General and will include the material indicated in FPR 1.2-407-8(a)(2). Simultaneous with the submission of a protest to the Comptroller General by a contracting officer under authority of this paragraph, the Assistant Deputy Administrator for Procurement and Supply (93) will be furnished a complete copy of the submission. The contracting officer will notify the protesting individual or firm promptly in writing of the decision of the Comptroller General. A copy of the decision and notification will be furnished the Assistant Deputy Administrator for Procurement and Supply (93).

(1) While a case involving a protest before award is pending in the Office of the Comptroller General, no award may be made except when, in the opinion of the contracting officer, the needs of his/her station will not permit delay in awarding the contract. He/she will document the specific reasons why the award must be made and submit a request for approval to the Assistant Deputy Administrator for Procurement and Supply (93) or the Assistant Deputy Administrator for Construction, whichever is appropriate.

(2) The Assistant Deputy Administrator for Procurement and Supply or the Assistant Deputy Administrator for Construction, whichever is appropriate, will file a notice of intent to make the award with the Comptroller General and request advice as to the status of the case. Upon receipt of this advice, the Assistant Deputy Adminis-

trator for Procurement and Supply or the Assistant Deputy Administrator for Construction will approve the request or advise the contracting officer as to the action to be taken.

(c) *Protest after award.* When a written protest is lodged with the contracting officer, he/she will review the basis for award.

(1) If the contracting officer determines that the award was proper, he/she will furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer will advise the protester that he/she may appeal the determination to the Assistant Deputy Administrator for Procurement and Supply (93) (or the Assistant Deputy Administrator for Construction in the case of a Central Office architect-engineer or construction contract) or the Comptroller General.

(2) If the contracting officer determines that the award is questionable he/she will advise the contractor of the protest and invite him/her to submit his/her views and relevant information. At the same time, the contracting officer will seek to obtain a mutual agreement with the contractor to suspend performance on a no-cost basis. Whether or not the contractor agrees, the case will be submitted promptly to the Assistant Deputy Administrator for Procurement and Supply (93) (or the Assistant Deputy Administrator for Construction in the case of a Central Office architect-engineer or construction contract), who will either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for his/her decision.

[47 FR 26128, June 17, 1982]

§ 8-2.407-50 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if (a) the specifications used in the invitation were not restrictive, (b) adequate competition was solicited, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such determination

will be made in writing and included on or attached to the abstract of bids.

[33 FR 6292, Apr. 23, 1968]

§ 8-2.408 Information to bidders.

(a) Prior to award, no information as to probable acceptance or rejection of any offer shall be given to any bidder or other person outside the VA.

(b) Except as provided in paragraphs (c) and (d) of this section, information as to performance under contract or an accepted bid is not public information and will be released to persons outside the VA only upon the authority of the immediate supervisor of the contracting officer.

(c) Except as provided in paragraph (d) of this section, the contracting officer may furnish information as to performance under a contract to those having a legitimate interest, such as banks, other financial companies and Government departments and agencies.

(d) When litigation is involved, all information will be furnished through the General Counsel.

[28 FR 2335, Mar. 12, 1963]

Subpart 8-2.5—Two-step Formal Advertising

§ 8-2.502 Conditions for use.

Two-step formal advertising will not be used by any Veterans Administration procurement activity unless its use has been approved by one of the following officials:

(a) Director, Veterans Administration Marketing Center, for contracts entered into by a Marketing Division.

(b) Assistant Deputy Administrator for Procurement and Supply for contracts entered into by field stations and the Procurement Service, Office of Procurement and Supply, Central Office.

(c) Director, Office of Administration, for contracts entered into by the Building and Supply Service, Central Office.

(d) Assistant Administrator for Construction for all construction contracts, excluding those for maintenance and repair entered into by a field station.

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(e) The Chief Benefits Director for contracts entered into for the loan guaranty and the vocational rehabilitation and educational programs, including those entered into by regional offices.

[33 FR 76, Jan. 4, 1968, as amended at 35 FR 13366, Aug. 21, 1970; 47 FR 26129, June 17, 1982]

PART 8-3—PROCUREMENT BY NEGOTIATION

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Subpart 8-3.9—Subcontracting Policies and Procedures

- 8-3.903-2 Review and approval of subcontracts.

AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 390; 38 U.S.C. 210, 40 U.S.C. 486(c).

Subpart 8-3.1—Use of Negotiation

§ 8-3.101 General requirements for negotiation.

(a) Contracts in excess of \$10,000 or \$1,000 for contracts made for repairs to properties acquired under chapter 37, title 38, United States Code, will be entered into by negotiation only in the absence of any one or more of the elements essential to formal advertising set forth in § 8-2.102, or when:

(1) It is determined that the procurement should be effected from small business in accordance with FPR 1-1.7.

(2) It is determined that the procurement should be effected from labor surplus area concerns in accordance with FPR 1-1.8.

(3) Items to be purchased are for authorized resale.

(b) Proposed contracts for the purchase of a firm quantity of supplies or equipment, at a cost in excess of \$200,000 are subject to the procedure set forth in § 8-2.407-1.

[30 FR 13228, Oct. 16, 1965, as amended at 39 FR 38378, Oct. 31, 1974; 40 FR 40803, Sept. 4, 1975]

**Subpart 8-3.2—Circumstances
Permitting Negotiation**

§ 8-3.200 Scope of subpart.

(a) Subject to the requirements and limitations prescribed in FPR 1-3.1, 1-3.2 and 1-3.3 and Subparts 8-3.1, 8-3.2 and 8-3.3, Veterans Administration contracting officers, acting within the scope of their authority, may negotiate contracts for the acquisition of supplies, equipment and services. Each such acquisition will cite the specific authority under which the procurement was negotiated.

(b) In those instances where a purchase in excess of \$10,000 may be negotiated under more than one authority, the contracting officer will select the authority he/she deems most appropriate to accomplish the purchase and will include in the contract file complete justification for his/her selection.

[35 FR 13366, Aug. 21, 1970, as amended at 40 FR 40803, Sept. 4, 1975]

§ 8-3.203 Purchases not in excess of \$10,000.

(a) Procurement of medical services and resources authorized by sections 4117 and 5053 of title 38, United States Code, costing less than \$10,000 may be procured by negotiation under authority of FPR 1-3.203. Each such contract and revision thereof is, however, subject to the same approval as those costing in excess of \$10,000. See § 8-3.204.

(b) Except as provided in this paragraph, purchases authorized to be negotiated under the special procurement authorities contained in title 38, United States Code, will be negotiated under the authority of FPR 1-3.203 when the amount of the purchase is not in excess of \$10,000. An exception exists in the case of services or supplies purchased on account of any property acquired under the Loan Guaranty program. For such purchases, 38 U.S.C. 1820(b) requires formal advertising if the amount will exceed \$1,000.

(c) Procurements of consulting, management, administrative and professional services costing less than \$10,000 and made under the authority

of 38 U.S.C. 213 are subject to the controls set forth in Subparts 8-4.52 and 8-4.53.

[40 FR 40803, Sept. 4, 1975, as amended at 45 FR 16183, Mar. 13, 1980]

§ 8-3.204 Personal or professional services.

(a) Various sections of title 38, United States Code, authorize the Administrator to enter into contracts for the purpose of acquiring personal or professional services. These authorizations do not, however, stipulate the manner in which such contracts are to be entered into, i.e., negotiation or formal advertising. Civilian agencies are, under the authority of FPR 1-3.204, authorized to procure such services by negotiation. Therefore, when the services listed in this section are to be acquired by the Veterans Administration, at a cost in excess of \$10,000, a contract will be negotiated by the contracting officer. These contracts will cite in addition to the authority to negotiate, FPR 1-3.204, the appropriate section of title 38 which authorizes the contract.

(b) Architect-engineer services when required in conjunction with construction (see Subparts 8-4.10 and 8-16.7 of this chapter) will cite as the authority for such negotiation FPR 1-3.204-38 U.S.C. 5002.

(c) Contracts with medical schools, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Veterans Administration facilities (including but not limited to services of physicians, dentists, nurses, physicians' assistants, dentists' assistants, technicians, and other medical support personnel) will be negotiated under authority of FPR 1-3.204 and 38 U.S.C. 4117.

(d) Contracts with other hospitals (or other medical installations having hospital facilities) or medical schools, or clinics in the medical community for:

(1) The mutual use, or exchange of use, of specialized medical resources when such a contract will obviate the need for a similar resource to be provided in a Veterans Administration facility; or

(2) The mutual use, or exchange of use, of specialized medical resources in a Veterans Administration facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity will be negotiated under authority of FPR 1-3.204-38 U.S.C. 5053.

(e) Proposed contracts for the services and resources specified in paragraphs (c) and (d) of this section may be entered into for 1 year only. When deemed essential to the mission of the stations, proposed renewal contracts will be negotiated for the subsequent year. Except as provided in paragraph (f) of this section, such proposed contracts will be submitted for approval to the appropriate Regional Director (13C) when authority is 38 U.S.C. 5053, or Assistant Deputy Administrator for Procurement and Supply (93) when authority is 38 U.S.C. 4117, so as to reach Central Office 60 days prior to the effective date of the contract.

(1) Complete justification for all contracts will be submitted, as approval depends on the adequacy of the justification.

(2) Proposed contracts under authority of 38 U.S.C. 4117 will be submitted in five copies, and contracts under authority of 38 U.S.C. 5053 will be submitted in six copies.

(3) The transmittal letter and each supporting document will be submitted in the same number of copies as the contract. As an incomplete submission delays processing of the proposed contract in Central Office, care should be exercised to assure that the proper number of copies are submitted, and that submissions are complete (e.g., complete name and address of the other party or parties to the contract are included).

(4) Proposed contracts of the type specified in paragraph (d) (1) and (2) of this section will be accompanied by a recommendation of the head of the station as to the geographical limits to be applied to the medical community.

(5) A copy of all executed sharing contracts, both new and renewal, will be forwarded to the appropriate Regional Medical Director (13C) for post audit and for purposes of making the annual report to Congress as required by 38 U.S.C. 5057.

(f) Proposed renewal sharing contracts under the authority of 38 U.S.C. 5053 and proposed renewal scarce medical specialist services contracts under the authority of 38 U.S.C. 4117 may be approved by the appropriate Medical District Director when such contract proposals meet the following conditions:

(1) There shall be no new services added to sharing contract renewals and no increases in full-time equivalent employee requirements for scarce medical specialist services contracts. Services may be deleted from the contract without Central Office approval only if such deletions do not effectively result in an individual item or total cost increase in excess of 10 percent over the cost in the previous contract.

(2) No individual cost item that is being procured by sharing agreement from the contractor (non-Veterans Administration facility identified in the contract) shall increase in cost more than 10 percent over the cost for that same item in the previous contract. The total cost of a scarce medical specialist services contract shall not increase more than 10 percent over the total cost of the previous contract.

(3) The proposal has been reviewed for legal sufficiency by the District Counsel responsible for servicing the Veterans Administration facility involved. The District Counsel shall be sent, along with the proposal, a copy of the previous agreement for the same services so that a comparison can be made of the two documents.

(4) All contract clauses required by Chapters 1 and 8, Title 41, Code of Federal Regulations, are included in the proposal.

(5) Equal Employment Opportunity clearance has been obtained, when required.

(g) Contracts for professional or technical services with private or public agencies not specifically authorized in any other section of title 38, United States Code, may be acquired under 38 U.S.C. 213 and negotiated under FPR 1-3.204 when the cost of such services will exceed \$10,000. Controls over the procurement of consulting, management, administrative and professional services are set forth in Subparts 8-4.52 and 8-4.53.

(h) Personal service contracts having an employer-employee relationship, except to the extent indicated in paragraph (c) of this section, will not be negotiated under this authority but will be consummated in accordance with MP-5, Parts I and II. The determination as to whether a contract is of this nature is primarily the responsibility of the appointing official. Contracting officers should, however, be alert to the conditions or circumstances set forth in this paragraph which, if present, could result in an invalid contract. If any of those conditions or circumstances are present, any doubts will be resolved by consultation with the requester and by seeking legal advice.

(1) *Contracts with individuals.* (i) The contract does not call for an end product which is adequately described in the contract.

(ii) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(iii) The services are to be of a continuing rather than a temporary or intermittent nature.

(2) *Contracts with concerns.* (i) Office space, equipment, and supplies necessary for contract performance are to be furnished by the Veterans Administration.

(ii) Contractor-furnished personnel are to be integrated within the Veterans Administration organizational structure.

(iii) Contractor-furnished personnel are to be used interchangeably with Veterans Administration personnel to perform the same functions.

(iv) The Veterans Administration retains the right to control and direct the means and methods by which contractor-furnished personnel accomplish this work.

[40 FR 40803, Sept. 4, 1975, as amended at 45 FR 16183, Mar. 13, 1980; 47 FR 18866, May 3, 1982]

§ 8-3.207 Medicines or medical supplies.

(a)(1) Except as provided in this section or when specific prior approval has been granted by the Assistant Deputy Administrator for Procurement and Supply to a field station contracting officer, no Veterans Administration contracting officer shall

enter into a contract by negotiation under authority of FPR 1-3.207, when the estimated cost of the item(s) required, singly or collectively, is in excess of \$10,000 for a single transaction.

(2) When an individual is designated to act in the capacity of one of the positions specified in this section, that individual is authorized to consummate contracts in excess of \$10,000 in the same manner as the incumbent of the position. The contracting officer's title will be indicated on the contract documents and official correspondence with the contractor. This will verify to the contractor that the contracting officer possesses the necessary contracting authority. Additionally, the contracting officer's title will appear on the applicable determinations and findings.

(b) The following contracting officers are authorized to award negotiated contracts in excess of \$10,000 for medicines or medical items:

(1) Assistant Deputy Administrator for Procurement and Supply.

(2) Director, Procurement Service.

(3) Director, Veterans Administration Marketing Center.

(4) Chief of each of the following Marketing Divisions:

(i) Medical-Dental-Scientific Supplies;

(ii) Medical Equipment;

(iii) Administrative Medical Supplies and Equipment (limited to prosthetic appliances defined as wheelchairs, hearing aids and batteries, artificial limbs, canes and stump socks);

(iv) Drugs and Chemicals;

(v) Radiological and Nuclear Equipment and Supplies.

(5) Four contracting officers for each Marketing Division when so designated by the Marketing Division Chief.

[43 FR 24532, June 6, 1978, as amended at 43 FR 51634, Nov. 6, 1978; 45 FR 63844, Sept. 26, 1980; 47 FR 4083, Jan. 28, 1982]

§ 8-3.209 Subsistence supplies.

(a)(1) Except as provided in this section or when specific prior approval has been granted by the Assistant Deputy Administrator for Procurement and Supply to a field station

contracting officer, no Veterans Administration contracting officer shall enter into a contract by negotiation under authority of FPR 1-3.209 when the estimated cost of the item(s) required, singly or collectively, is in excess of \$10,000 for a single transaction.

(2) When an individual is designated to act in the capacity of one of the positions specified in this section, that individual is authorized to consummate contracts in excess of \$10,000 in the same manner as the incumbent of the position.

(b) The following contracting officers are authorized to negotiate contracts in excess of \$10,000 for the purchase of subsistence supplies:

(1) Assistant Deputy Administrator for Procurement and Supply.

(2) Director, Procurement Service.

(3) Director, Veterans Administration Marketing Center.

(4) Chief, Marketing Division for Subsistence.

(5) Three senior contracting officers, Marketing Division for Subsistence when so designated by the Marketing Division Chief.

[33 FR 10848, July 31, 1968, as amended at 34 FR 12782, Aug. 6, 1969; 41 FR 46436, Oct. 21, 1976; 45 FR 36844, Sept. 26, 1980; 47 FR 4083, Jan. 28, 1982]

§ 8-3.210 Impracticable to secure competition by formal advertising.

(a) Contracts for paid advertising for community placement homes and for recruitment purposes, may be negotiated under the authority of this section, after the request for the procurement of such advertising has been approved by one of the officials designated in VA Regulations 3 and 4 (38 CFR 2.3 and 2.4).

(b) Contracts for the procurement of paid advertising in the purchase or sale of supplies, equipment or services, may be negotiated under authority of this section, only after the request for such procurement has been approved by the Administrator.

[31 FR 16312, Dec. 21, 1966, as amended at 33 FR 6292, Apr. 23, 1968; 33 FR 14166, Sept. 19, 1968; 43 FR 51635, Nov. 6, 1978]

§ 8-3.211 Experimental, developmental, or research work.

Research authorized to be conducted by the Veterans Administration, in accordance with the provisions of title 38, United States Code, will be negotiated under the authority of FPR 1-3.211 (except that prosthetics research authorized by 38 U.S.C. 5023 will be negotiated under the authority of FPR 1-3.215)

[46 FR 22897, Apr. 22, 1981]

§ 8-3.215 Otherwise authorized by law.

Various sections of title 38, United States Code, authorize the Administrator to enter into certain contracts, and certain types of contracts, without regard to any other provision of law. Veterans Administration contracting officers entering into contracts by negotiation for any of the following items or services, estimated to cost in excess of \$10,000, will cite, in addition to FPR 1-3.215, the appropriate section of title 38, United States Code as their authority to do so:

(a) Contracts for orthopedic and prosthetic appliances and related services including research. FPR 1-3.215—38 U.S.C. 5023.

(1) Contracts for items and services negotiated under this authority require a technical review under the provisions set forth in § 8-1.403-60, even though the dollar amounts may not meet the levels specified in that section.

(b) Contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service. FPR 1-3.215—38 U.S.C. 4202.

(c) Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 5009(b)

(2), *Provided That*: (1) The establishment, operation and maintenance of such facilities have been authorized by the Administrator or designee; and (2) the station head determines in writing that operation by contract or lease is both desirable and warranted. FPR 1-3.215—38 U.S.C. 5009(b) (2).

(d) Contracts for laundry and other common services, such as the purchase of steam, may be negotiated with non-profit, tax-exempt, educational, medi-

cal, or community institutions, when specifically approved by the Administrator or designee and when such services are not reasonably available from private commercial sources. FPR 1-3.215—38 U.S.C. 5022(c). Requests to enter into such contracts will be submitted to the Associate Deputy Chief Medical Director (10B) for approval by the Administrator or designee.

[35 FR 13367, Aug. 21, 1970, as amended at 40 FR 40805, Sept. 4, 1975; 46 FR 22897, Apr. 22, 1981]

Subpart 8-3.4—Types of Contracts

§ 8-3.403 Selection of contract type.

(a) Contracts for supplies or nonpersonal services awarded pursuant to Part 8-2 or this part shall be of the following types:

(1) Firm fixed price for a period of one (1) year or less.

(2) Firm fixed price for one year with options for succeeding years. (See § 8-1.15 and FPR 1-1.15.)

(3) Fixed price with an escalation clause. (See FPR 1-3.404-3.)

(b) Contracts of the type specified in paragraph (a)(3) of this section which include an escalation provision other than the price adjustment clause for service contracts (FPR 1-12.904-3) will require the prior approval of the Assistant Deputy Administrator for Procurement and Supply (90). The request for approval will clearly set forth the need for the provision.

(c) Contracts of the type specified in paragraph (a) (2) and (3) of this section will be entered into only when such contracts are clearly shown to be advantageous to the Veterans Administration. The contracting officer shall document the contract file to show the specific and compelling reasons for the selection of the particular type contract.

(d) Any contract involving direct obligation of appropriations and which extends beyond the appropriation of the year in which the contract period begins or which is for more than 1 fiscal year, shall contain provisions to the effect that:

(1) It is made for the period covered by the contract, subject to the avail-

ability of appropriations in the ensuing year(s), and

(2) No service will be performed by the contractor after September 30 of each fiscal year unless and until specifically authorized by the contracting officer or representative.

(e) Architect-engineer contracts, construction contracts, or professional engineer contracts, financed by "no year appropriations" are not subject to the requirements of paragraph (d) of this section.

[30 FR 4674, Apr. 10, 1965, as amended at 32 FR 3773, Mar. 7, 1967; 32 FR 8027, June 3, 1967; 47 FR 15332, Apr. 9, 1982]

§ 8-3.405-5 Cost-plus-a-fixed-fee contract.

(a) Contracts of this type may be entered into only after the Contracting Officer has made the determination required by FPR 1-3.302(b). The determination shall be made a part of the contract file.

(b) The amount of the fee to be paid or allowed to a prime contractor or subcontractor under this type of contract shall be negotiated by the Contracting Officer within the statutory limitations set forth in FPR 1-3.405-5(c)(2).

(c) A determination to include in a cost reimbursement type contract, a proviso that will permit an interim payment in excess of 80 percent of the costs incurred, shall be made by the department or staff head concerned.

[30 FR 4674, Apr. 10, 1965, as amended at 32 FR 3773, Mar. 7, 1967; 33 FR 12550, Sept. 5, 1968]

§ 8-3.408 Letter contract.

The department head or staff officer concerned shall prior to the execution of a letter contract, determine in writing that no other type contract is suitable. The determination shall establish the limit of the effectiveness of the letter contract; i.e., the date by which the definitive contract will be entered into. This date shall be not more than 90 days from the date of the letter contract or the completion of 25 percent of the production of the supplies or the performance of the work called for under the contract, whichever occurs first. The maximum liability of the Veterans Administra-

tion under a letter contract shall not exceed 50 percent of the total estimated contract price.

[30 FR 4674, Apr. 10, 1965]

§ 8-3.450 Unauthorized types of agreements.

[45 FR 46387, July 10, 1980]

§ 8-3.450-1 Letters of availability.

(a) *Description.* A letter of availability (sometimes inappropriately called a letter of intent) is a letter to a supplier primarily for the purpose of obtaining a place on the supplier's production or delivery schedule for long lead time items. Such a letter typically indicates that products or services are being considered for procurement, but that the statement of intent is not to be construed as a commitment. Such letters of availability are sometimes solicited by prospective contractors, or they may be originated by Government personnel. A letter of availability is distinguished from a letter contract which is specifically authorized by FPR 1-3.408.

(b) *Policy.* (1) Unless specifically authorized by the Assistant Deputy Administrator for Procurement and Supply, letters of availability will not be utilized for the following reasons:

(i) While such letters of availability may disclaim Government liability, they may induce potential contractors to initiate costly preparations in anticipation of contract award.

(ii) Procurements announced in such letters do not always materialize. The result may be costly to the Government, the prospective contractor, or both. If the author of the letter of availability is an authorized contracting officer of the agency, the Government may be bound by the action, even though the action is contrary to sound procurement practices and/or fiscal regulations. If the author of the letter of availability lacks procurement authority, the prospective contractor may incur substantial expenditures which may not be recovered from the Government, but for which the prospective contractor may seek to hold the unauthorized author personally liable.

(iii) The issuance of a letter of availability may violate the "Anti-Deficiency Act" (31 U.S.C. 665).

(2) It is recognized that potential contractors have a need to obtain procurement information at the earliest possible moment in order to make timely preparations. To this end, procurement personnel are expected to move as efficiently and expeditiously as possible on all procurement actions.

[45 FR 46387, July 10, 1980, as amended at 47 FR 15333, Apr. 9, 1982]

Subpart 8-3.6—Small Purchases

§ 8-3.602 Policy.

(a) Pursuant to Pub. L. 95-507, small purchases will be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. Such procurements from small business concerns will be considered small business set-asides.

(b) Procurements exceeding \$2,500 will be considered for set-asides in accordance with the priorities specified in FPR 1-1.706-1, and will be documented in accordance with § 8-1.706-50.

(c) When it is contemplated that a single purchase order will be issued to the supplier quoting the lowest aggregate price, the suppliers will be so advised at the time quotations are solicited.

[45 FR 14044, Mar. 4, 1980, as amended at 45 FR 55426, Aug. 20, 1980]

§ 8-3.603 Competition.

[28 FR 2336, Mar. 12, 1963]

§ 8-3.603-2 Data to support small purchases.

Quotation information shall be recorded in the manner and to the extent outlined in FPR 1-3.603-2. The quotations will be recorded on one of the following:

(a) An Abstract of Bids (VA Form 60-1286, 60-2232, or 08-6103), or

(b) The purchase request if space permits, or

(c) Other supplemental sheet or form, such as VA Form 10-2237b, Request for Dietetic Supplies, provided that such supplemental sheet or form is made a part of an approved procurement file.

[35 FR 15757, Oct. 7, 1970, as amended at 45 FR 14044, Mar. 4, 1980]

§ 8-3.604 Imprest funds (petty cash) method.

[28 FR 2336, Mar. 12, 1963]

§ 8-3.604-6 Procurement and payment.

(a) Each purchase costing \$25.00 or more will be supported by a cash register receipt, invoice, sales slip, or other sales document which shall, if possible, contain an itemized listing of the items purchased and be signed by the vendor or his/her agent. The cash receipt or sales document shall be furnished by the vendor to whom cash payment is made. Such cash receipt or sales document shall indicate the name of the vendor. When it is not possible to secure the listing of signature, the purchaser (employee authorized to accomplish the cash purchase) shall prepare and sign Standard Form 1165, Receipt for Cash-Subvoucher, listing thereon the name of the vendor and the articles or services purchased. The vendor's receipt for cash payment shall be attached to the SF 1165 subvoucher.

(b) Each purchase costing less than \$25.00 shall be supported by a receipt for cash or sales document as required in paragraph (a) of this section, except that the signature of the vendor or agent need not be secured. When a receipt is obtained for purchases costing less than \$25.00, the SF 1165 is not required. If a receipt cannot be secured, the purchaser shall prepare and sign the SF 1165, listing thereon the name of the vendor and the article or services purchased.

(c) When the Imprest Fund Cashier advances funds to an employee designated by the facility Director or to a messenger, under the provisions specified in MP-4, part I, section 4.05, the Imprest Fund Cashier will ensure that such designee or messenger is aware of the requirements for documentation specified in paragraphs (a) and (b) of this section, and the limitation of im-

prest fund purchasing elsewhere prescribed.

(d) All receipts for cash payments and SF 1165 subvouchers shall be securely attached to Standard Form 1129, Reimbursement Voucher, and submitted to the fiscal activity at the time of imprest fund replenishment, in accordance with MP-4, part I, chapter 4.

[45 FR 14044, Mar. 4, 1980, as amended at 45 FR 55426, Aug. 20, 1980]

§ 8-3.605 Purchase order forms.

[30 FR 4674, Apr. 10, 1965]

§ 8-3.605-1 Standard Form 44, Purchase Order—Invoice—Voucher.

(a) SF 44 is primarily intended for on the spot, over the counter transactions. The design of SF 44 contemplates purchase and receipt by the same individual under circumstances where normal procurement practices cannot be followed. Under some circumstances it may be desirable to designate, as a purchasing agent an individual other than one normally engaged in procurement activities, and to issue a book of SF 44's to such an individual. In such cases, the individual must be carefully instructed as to the limitations involved in his purchasing authority.

(b) Purchasing offices using SF 44 will be responsible for safeguarding the forms. They will maintain a record of quantities received, issued, and used.

(c) SF 44 may also be used in connection with Imprest Fund and Petty Cash Purchases when a purchase order is required by the vendor as evidence of tax exemption or to grant Government discounts.

[28 FR 2336, Mar. 12, 1963, as amended at 30 FR 4674, Apr. 10, 1965]

§ 8-3.605-3 Agency order forms.

(a) VA Form 60-2138 (or 90-2138), Order for Supplies or Services, and VA Form 60-2139 (or 90-2139), Order for Supplies or Services (Continuation), provide in one interleaved set of forms a purchase or delivery order, vendor's invoice, and receiving report. They will be used in lieu of and in the same

manner as Standard Forms 147 and 148.

(1) When using VA Form 60-2138 (or 90-2138) for maintenance contracts involving services performed on Government property and which have the potential for property damage and liability claims, the Contractor Responsibility Clause found in 8-7.150-5 will be attached. Applicable maintenance contracts include but are not limited to window washing, pest control and elevator maintenance.

(b) The following order forms are for use when ordering the indicated medical, dental and ancillary services up to \$2,500 per authorization when such services are not available under existing contracts or agreements. The forms are also for use without monetary limitations when ordering such services from existing contracts.

(1) VA Form 10-2569, Authorization for Dental Service.

(2) VA Form 10-7078, Authorization and Invoice for Medical and Hospital Services.

(3) VA Form 10-7079, Request for Outpatient Medical Services.

(4) VA Form 10-2570d, Dental Record, Authorization and Invoice for Outpatient Services.

(c) In authorizing patient travel as set forth in VA Manual MP-1, Part II, Chapter 3, VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, will be used as provided by that manual.

(d) Optional Form 170 or Standard Form 182, Request, Authorization, Agreement, and Certification of Training, and Certification of Training, will be utilized for the procurement of training in the manner prescribed in § 8-74.104.

[38 FR 10007, Apr. 23, 1973, as amended at 39 FR 26723, July 23, 1974; 45 FR 14045, Mar. 4, 1980; 46 FR 22757, Apr. 21, 1981]

§ 8-3.606 Blanket purchase arrangements.

§ 8-3.606-5 Agency implementation.

(a) Blanket purchase arrangements for open market transactions may be made without regard to a limitation of time or dollar amount.

(b) The duplicate and triplicate copies of the VA Form 07-2237, Request, Turn-in, and Receipt for Prop-

erty or Services, or reproduced copies of the front of the VA Form 10-7142, Procurement Request, requesting the purchase will be used as the receiving report and property voucher for each individual purchase made under these arrangements.

(c) Items procured under blanket purchase arrangements will be analyzed periodically to determine if they can be procured more economically by consolidating requirements and making periodic procurements.

(d) Blanket purchase arrangements made under existing contracts are restricted only to the period covered by the contract.

[32 FR 3773, Mar. 7, 1967, as amended at 34 FR 11095, July 1, 1969; 37 FR 18729, Sept. 15, 1972]

§ 8-3.607-50 Intra-agency use of local term contracts.

Where there is more than one Veterans Administration field station located in a community, or within a reasonable commuting distance, consideration shall be given to entering into a single contract for supplies or services not available from normal Veterans Administration supply channels. In determining whether such a single contract is both feasible and economical, the Chiefs, Supply Service, of the respective field stations concerned shall be guided by the provisions of FPR 1-3.607.

[45 FR 14045, Mar. 4, 1980]

§ 8-3.650 Oral purchase orders.

Oral purchase orders, when considered advantageous to the Veterans Administration, may be used for transactions not in excess of \$2,500. The transaction will be assigned a purchase order number and receipt documentation will be obtained on the copies of the purchase request utilized as a property voucher and receiving report. Documentation as to competition will be in accordance with FPR 1-3.603-2.

[33 FR 10456, July 23, 1968]

Subpart 8-3.7—Negotiated Overhead Rates

§ 8-3.705 Procedure.

Contracting officers will request the Director, Contract and Special Audit Service (52C), to audit proposed overhead rates for use in cost-reimbursement contracts whenever the estimated amount of the contract is in excess of \$100,000. Such requests by field station contracting officers will be submitted through the Director, Supply Service, Central Office. In the case of smaller contracts, the contracting officer will perform a review and validation of the data submitted for accuracy and reasonableness of proposed rates. He/she may, if in Central Office, request the Director, Contract and Special Audit Service (52C), to perform an audit or render such accounting assistance or technical advice as is deemed desirable. A field station contracting officer may direct request for such service on smaller contracts to the local fiscal activity serving the contracting officer.

[45 FR 7813, Feb. 5, 1980]

Subpart 8-3.8—Price Negotiation Policies and Techniques

SOURCE: 34 FR 13924, Aug. 30, 1969, unless otherwise noted.

§ 8-3.800 Scope of subpart.

The principles set forth in FPR 1-3.8, as well as those in this subpart, on the basic policy, pricing techniques, requirements for cost or pricing data, and the evaluation and audit of cost and pricing data apply to all negotiated cost-reimbursement and negotiated firm fixed-price contracts and contract modifications. These principles also apply to annual revisions of prices under cost-reimbursement contracts as well as to the negotiation of initial prices.

§ 8-3.801 Basic policy.

§ 8-3.801-2 Responsibility of contracting officers.

(a) Contracting officers are responsible for the legal, technical and administrative sufficiency of the contracts

they enter into. They will exercise reasonable care, skill, and judgment and will obtain the advice of specialists in the fields of contracting, finance, law, contract audit, engineering traffic management, and cost analysis as in their discretion is necessary to best serve the interests of the Government.

(b) When in the opinion of the contracting officer, the complexity of the proposed contract warrants, he/she will submit the proposed contract to the Director, Supply Service for review and comment. When deemed advisable, the Director, Supply Service, will request the General Counsel to accomplish a legal review.

[34 FR 13924, Aug. 30, 1969, as amended at 45 FR 7813, Feb. 5, 1980]

§ 8-3.801-3 Responsibility of other personnel.

The Director, Contract and Special Audit Service, will provide advice, assistance or cost audits as provided in §§ 8-3.705, 8-3.809, and 8-3.813.

[45 FR 7813, Feb. 5, 1980]

§ 8-3.805 Selection of offerors for negotiation and award.

[35 FR 13367, Aug. 21, 1970]

§ 8-3.807 Pricing techniques.

§ 8-3.807-3 Cost or pricing data.

(a) Under the circumstances prescribed in FPR 1-3.807-3, the contracting officer will require the prospective contractor to submit cost or pricing data and to certify to its accuracy and completeness. This data will be used by the contracting officer in the evaluation of the offer and in the negotiation of the contract price. The cost of pricing data is required to determine the reasonableness of the proposed price where such price is based on the cost of the proposed work. It is not required where the reasonableness of the proposed price can be determined by the contracting officer based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation.

(b) When cost or pricing data is required and the amount of any negoti-

ated fixed-price or cost-reimbursement contract or contract modification is expected to exceed \$100,000, the cost or pricing data, after evaluation by the contracting officer, will be forwarded to the Director, Contract and Special Audit Service (52C), for prior audit as to the adequacy, accuracy and applicability of the costs included. Such requests for prior audit will be submitted by field station contracting officers, through the Director, Supply Service.

(c) In the case of smaller contracts the contracting officer will perform a review and validation of the data submitted for accuracy and reasonableness of proposed costs. He/she may, if in Central Office request the Director, Contract and Special Audit Service (52C), to perform an audit or render such accounting assistance or technical advice as deemed desirable. A field station contracting officer may request such assistance and advice from the local fiscal activity serving the contracting officer.

(d) Cost of pricing data may, but need not, be submitted to the Director, Contract and Special Audit Service (52C), for prior audit, for the following transactions:

(1) Negotiated fixed-price contract modifications to a formally advertised fixed-price contract, where wage rates and allowance for overhead and profit are established by the contract and the units of work can be evaluated by price comparison.

(2) Negotiated fixed-price architect-engineer contracts, where the contracting officer establishes the reasonableness of the negotiated price on the basis of previous contracts of a similar nature and accomplishes an analysis of costs relating to each phase of the required work.

(3) Negotiated fixed-price or cost-reimbursement utility connection or site facility agreements, developed by the Office of Construction, representing contracts for the construction of service facilities or site clearance where cost data submitted (construction cost estimates) will be evaluated by design and cost engineering staffs of the Office of Construction.

[34 FR 13924, Aug. 30, 1969, as amended at 45 FR 7813, Feb. 5, 1980]

§ 8-3.808 Profit or fee.

§ 8-3.808-1 General.

If a profit or fee is involved, it must be established as a dollar amount and not as a percentage of the cost estimate, in order to avoid the cost-plus-a-percentage-of-cost system of contracting which is not legal (see FPR 1-3.401(b)). Once established, the profit or fee cannot be escalated during the period of the contract. However, when a change order materially affects the scope of the work, an additional profit or fee or an appropriate reduction may be negotiated.

§ 8-3.809 Contract audit as a pricing aid.

The Director, Contract and Special Audit Service, or a recognized audit agency, e.g., the Defense Contract Audit Agency, at the request of the Director, Contract and Special Audit Service, will provide advisory audits, special surveys or audit analysis of price or cost, when required by this Subpart 8-3.8 or when assistance is requested by the contracting officer.

[45 FR 7814, Feb. 5, 1980]

§ 8-3.813 Preproduction and startup and other nonrecurring costs.

In evaluating startup and other non-recurring costs, the extent to which these costs are included in the proposed price and the intent to absorb or recover any such costs in any future noncompetitive procurement or other pricing action will be determined. The contracting officer will ascertain, with the assistance of the Director, Contract and Special Audit Service, as required or considered necessary, that payment of such costs is not duplicated. For example, cost of equipment paid for by the Government through a setup or connection agreement will not be included in depreciation costs of a subsequently negotiated agreement.

[45 FR 7814, Feb. 5, 1980]

Subpart 8-3.9—Subcontracting Policies and Procedures

§ 8-3.903-2 Review and approval of subcontracts.

All cost-reimbursement type contracts shall:

(a) Provide for advance notification and prior approval by the Contracting Officer of any subcontract thereunder on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either \$25,000 or 5 per centum of the total estimated cost of the prime contract.

(b) Contain a provision that any authorized representative of the Administrator of the Veterans Administration shall have the right to inspect the plans and to audit the books and records of any prime contractor or subcontractor engaged in the performance of cost-plus-a-fixed-fee contracts.

[30 FR 4674, Apr. 10, 1965]

PART 8-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 8-4.4—Public Utilities

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- 8-4.1004-4 Action by agency head or his authorized representative.
- 8-4.1004-5 Procedure for procurements estimated not to exceed \$10,000.
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- 8-4.1005-1 General.
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- 8-4.5101 General.
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APPENDIX A—INFORMATION TO BE INCLUDED IN REQUESTS FOR CONTRACTUAL SERVICES
APPENDIX B—MANAGEMENT AND PROFESSIONAL SERVICES, SPECIAL STUDIES AND ANALYSES, AND MANAGEMENT AND SUPPORT SERVICES FOR RESEARCH AND DEVELOPMENT

AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 390; 38 U.S.C. 210, 40 U.S.C. 486(c).

Subpart 8-4.4—Public Utilities

SOURCE: 34 FR 13925, Aug. 30, 1969, unless otherwise noted.

§ 8-4.406 Procurement policy and regulations.

§ 8-4.406-2 Agency supply arrangements.

(a) When formal bilateral written contracts are required by FPR 1-4.410-2 or 1-4.410-3 and GSA areawide contracts are not available, the contracting officer will determine whether GSA long-term contracts or consolidated purchase, joint use, or cross-service agreements would be in the best interests of the Government. In making this determination, the contracting officer will contact all suppliers of the required utility service to establish the most advantageous rate available under short-term and long-term contracts. Other agencies and installations in the area will be contacted to compare rates offered under similar circumstances and to evaluate the benefits of consolidated purchase or joint use agreements.

(b) Technical advice and consulting assistance is available from GSA, as provided by FPR 1-4.404.

§ 8-4.407 GSA areawide contracts.

When a GSA areawide contract for the required utility service is available, utility services will be procured thereunder as provided by FPR 1-4.407, unless special rates can be negotiated under the areawide contract or a separate contract. When provided in the areawide contract, connection agreements may also be obtained thereunder.

§ 8-4.408 GSA long-term contracts.

(a) If the contracting officer determines that a GSA long-term contract may be justified in accordance with the provisions outlined in FPR 1-4.408, GSA will be requested to negotiate a long-term contract.

(b) The request will be submitted to General Services Administration, Federal Supply Service, Public Utilities Management Division, Washington, D.C. 20406. It will state the reason a long-term contract is believed justified and will include the following information:

(1) Copy of existing contract or agreement.

(2) Copies of all current rate schedules.

(3) Record of past 12 months usage, preferably in the form of copies of bills or invoices.

(4) Statement regarding any anticipated or planned future changes.

(5) Point and characteristics of delivery.

(6) Statement covering equipment or connection requirements and ownership.

(7) Names and addresses of all suppliers, both regulated and unregulated, of the required service.

[34 FR 13925, Aug. 30, 1969, as amended at 38 FR 26368, Sept. 20, 1973]

§ 8-4.409 Consolidated purchase, joint use, or cross-service.

If a consolidated purchase, joint use, or cross-service agreement would be advantageous, an appropriate memorandum of understanding will be entered into, as provided by FPR 1-4.409. GSA assistance will be provided when requested.

§ 8-4.410 Independent procurement by executive agencies.

When GSA areawide contracts are not available and GSA long-term contracts, consolidated purchase, joint use, or cross-service agreements are not consummated, the contracting officer will obtain required utility services and/or connections as provided by FPR 1-4.410.

§ 8-4.410-5 Uniform clauses for utility service contracts.

(a) [Reserved]

(b) In addition to the clauses contained in GSA Form 1685, Supplemental Provisions (Utility Service Contract), the clauses referred to in this paragraph will be included, when applicable. Stock of the form will be obtained from the VA Forms and Publications Depot.

(1) Changes in rates (§ 8-7.150-7).

(2) Termination. (When a termination clause is appropriate, it will be written to cover the needs of the specific contract, conforming to the principals of FPR 1-8.7 insofar as practical.)

(c) Negotiated cost-reimbursement and fixed-price contracts will also in-

clude the following clauses, when required by the referenced FPR section:

- (1) Negotiated overhead rates (FPR 1-3.704).
- (2) Certificate of current cost or pricing data (FPR 1-3.807-4).
- (3) Subcontracting considerations in cost analysis (FPR 1-3.807-10).
- (4) Contract clauses (FPR 1-3.814).

[34 FR 13925, Aug. 30, 1969, as amended at 38 FR 26369, Sept. 20, 1973; 41 FR 19317 May 12, 1976]

§ 8-4.411 Prior review of certain proposed procurements.

§ 8-4.411-2 Prior review by GSA.

Except as provided in § 8-4.411-3, proposed utility procurements meeting the criteria of FPR 1-4.411-1 will be forwarded to General Services Administration, Federal Supply Service, Public Utilities Management Division, Washington, D.C. 20406, for prior review.

[38 FR 26369, Sept. 20, 1973]

§ 8-4.411-3 Alternative prior review by the procuring agency.

Prior review of contracts for utility connections and contracts for combined utility connections and services consummated by the designated contracting officer(s) in Central Office will be made by technical and administrative personnel in the Office of Construction, when required by FPR 1-4.411-1.

[38 FR 26369, Sept. 20, 1973]

Subpart 8-4.6—Livestock Products

§ 8-4.607 Reporting violations.

Instances of possible violations of the statement of eligibility given in accordance with FPR 1-4.604 will be reported to the Chief Medical Director for review and submission to the General Counsel. Determination as to whether or not the case should be submitted to the Department of Justice will be made by the General Counsel.

[28 FR 11455, Oct. 25, 1963]

Subpart 8-4.8—Consulting and Related Services

SOURCE: 47 FR 25526, June 14, 1982, unless otherwise noted.

§ 8-4.800 Scope of subpart.

This subpart implements FPR 1-4.8 and supplements it with the basic policy prescribed by OMB Circular A-120 and with the agency control procedures established pursuant to that directive. The subpart also applies to the procurement of management and professional services, special studies and analyses, and the management and support services for research and development activities as indicated in § 8-4.853.

§ 8-4.802 Definition.

For the purpose of this subpart, the definition of consulting services shall, in addition to examples listed in FPR 1-4.802, include peer review of research proposals.

§ 8-4.803 Contracting requirements.

§ 8-4.803-1 Basic policy.

(a) Consulting services will not be used in performing work of a policy or decision-making or managerial nature which is the direct responsibility of agency officials.

(b) Consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

(c) Consulting services will not be used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.

(d) Former Government employees per se will not be given preference in consulting service arrangements.

(e) Consulting services will not be used under any circumstances to specifically aid in influencing or enacting legislation.

(f) Grants and cooperative agreements will not be used as legal instruments for consulting service arrangements.

(g) A competitive solicitation is the preferred method of obtaining con-

sulting services and should be used to the maximum extent practicable to insure that costs are reasonable. To that end, requests for approval of the use of consulting services must be made in sufficient time to enable the appropriate procurement action to be taken. A firm fixed-price contract (FFP) is the preferred contract type and will be used to the maximum extent possible. The contracting officer will determine the feasibility of using a FFP contract and may solicit further detail from the requesting official in order to make that determination.

(h) Sponsoring offices will avoid any contact or discussion with prospective contractors that may impinge on the integrity of the procurement process. Final selection of contractors and negotiation of terms, conditions and prices are matters lying solely within the province of the contracting officer (also see § 8-1.402).

(i) Requesting officials submitting requirements for consulting services will submit work statements which are specific, complete, and which specify fixed periods of service. End products must be specific and unambiguous, and defined in terms which directly relate to the problem at hand.

(j) Sole-source contracts for consulting services resulting from unsolicited proposals are generally not appropriate. Therefore, when a using activity receives an unsolicited proposal for consulting services, and determines it has a need for such services, a contracting officer shall synopsize the requirement for publication in the Commerce Business Daily to determine if there are other qualified contractors interested in submitting a proposal. Qualified contractors shall be solicited.

(k) If program or contracting officials become aware of serious deficiencies in the performance of duties and responsibilities outlined in this subpart, they will report such deficiencies to their respective department or staff office heads for corrective action. These reports, including corrective actions taken, will be forwarded to the Administrator.

§ 8-4.803-2 Guidelines for use of consulting services.

Consulting service arrangements may be used when essential to the mission of the agency to:

(a) Obtain specialized opinions or professional or technical advice which does not exist or is not available within the agency or another agency.

(b) Obtain outside points of view to avoid too limited judgment on critical issues.

(c) Obtain advice regarding developments in industry, university, or foundation research.

(d) Obtain the opinion of noted experts whose national or international prestige can contribute to the success of important projects.

(e) Secure citizen advisory participation in developing or implementing Government programs that by their nature or by statutory provision call for such participation.

(f) Obtain assistance to complete a necessary project within a specified period of time.

§ 8-4.803-3 Responsibilities.

(a) *Contracting officer responsibilities.* (1) The contracting officer is responsible for making the determination that the requirements submitted by the requesting official are in fact consulting services. The contracting officer will be guided by definitions in FPR 1-4.8. Upon an affirmative determination that consulting services are being requested, the contracting officer will insure that all justifications for approval required by § 8-4.803-4 are prepared and submitted properly.

(2) The contracting officer will require as a condition of the contract that the contractor will submit all reports with covers which display the following information:

(i) Name and business address of the contractor.

(ii) Contract number.

(iii) Dollar amount of award (including modifications).

(iv) Type of award, i.e., competitive or noncompetitive.

(v) Identification of the official who requested the consulting services, including the name of the organization and telephone number.

(vi) The following notation will be included:

NOTE: Public Law 97-101, section 412, requires that upon the transfer of the contents of this report, or a substantial part of this report, to any other Government document, the new document shall appropriately identify the contract and contractor involved in the development of this report.

(3) The contracting officer is responsible for assessing actual and potential organizational conflicts of interest. These determinations will be governed by § 8-4.851. The contracting officer should pay particular attention to proposed contract requirements which call for advice on future agency decisions to contract, particularly when the development of specifications and work statements is involved.

(b) *Technical support.* (1) Contracting officers will designate a representative of the sponsoring office as the Contracting Officer's Technical Representative (COTR).

(2) The designated COTR will monitor contract performance in accordance with the plan required by Appendix A of this subpart and submit to the contracting officer all resulting documentation for inclusion in the contract file.

(3) No consulting contract file will be closed out until the sponsoring official has provided for file a written evaluation of the performance of each consulting contractor as well as a statement of the extent to which the contractor's report (or other end product) has been used or is expected to be used. Also, the contracting officer should, in conjunction with the responsible program official, compare the original contract cost with the final cost and determine the nature of any other deviations from the original contract specifications. Any irregularities should be reported to the Inspector General. Final evaluations should also specify reasons for rejecting any of the contractor's recommendations.

(4) Copies of all final evaluations should be sent to the Assistant Deputy Administrator for Procurement and Supply (93).

§ 8-4.803-4 Approval of procurement of consulting services.

(a) Contracts for consulting services will be approved by the Administrator regardless of amount, except as provided for in § 8-4.803-51. The methodology for obtaining the approvals required by this paragraph are set forth in paragraph (c) of this section. However, no request for approval of procurement shall be initiated by a contracting officer without the requirement for consulting services first having received the review required in paragraph (b) of this section.

(b) Prior to the submission of an approval request to a contracting officer as required by paragraph (c) of this section, the activity requesting the consulting services will have such requirements reviewed and approved at one level above the activity and, if occurring during the fourth quarter, two levels above. At field facilities this initial review need not exceed the facility head. In Central Office this review need not exceed department heads for requirement emanating within the operating departments and will not exceed the Associate Deputy Administrator having jurisdiction for requirements emanating from staff offices. The purpose of this initial review will be to notify management in the chain of command of all consulting services requirements, and to insure that departmental policy pertaining to such services has been adhered to, including any budget restrictions imposed by the Office of Management and Budget.

(c) The approval of the Administrator will be requested by means of a notification of intent prepared by the contracting officer in the form of a letter or memorandum and submitted through channels to the Assistant Deputy Administrator for Procurement and Supply. The Assistant Deputy Administrator for Procurement and Supply will review the submission for consistency of application of agency policy, and will be responsible for maintaining a consolidated record of requests submitted to the Administrator and the results of those submissions. Subsequent to that review, the notices will be forwarded for the approval of the department

head (or designated staff) or to the appropriate Associate Deputy Administrator having jurisdiction over the requesting activity. The General Counsel and the Assistant Deputy Administrator for Budget and Finance will also review and concur in the requests.

(d) The notification of intent will cite the pertinent authority warranting negotiation and, in addition to any required Determination and Findings, will contain the information indicated in Appendix A to this part as applicable to the proposed procurement. Where a specific individual or concern is proposed, the notification of intent will also include a statement as to any previous or current contracts with that individual or concern, and as to the consideration given to organizational conflicts of interest.

(e) The approval of the Administrator is in addition to and does not replace technical and legal reviews of contract documents prior to award prescribed elsewhere in these regulations.

§ 8-4.803-51 Special controls for letters of agreement.

(a) Letters of agreement may be used to procure consulting services and advisory board memberships only by those individuals designated in § 8-75.201-17(a) and individuals delegated authority under the conditions specified in paragraph (b) of that section. The delegated official will perform or have performed for each letter of agreement all those duties and requirements prescribed in this subpart, as modified by paragraphs (b), (c), (d) and (e) of this section. That official will also insure that all reporting requirements are completed for each action.

(b) The department or staff office head will be the highest level approving official (except under those circumstances described in paragraph (c) of this section) for each procurement action which does not exceed \$500 in consulting fees (excluding travel, per diem and other travel-related costs) and which does not award more than an accumulated total of \$2,500 per year in consulting fees to any individual or firm.

(c) All actions exceeding the limits specified in paragraph (b) of this section and those actions anticipated to be awarded in a fourth quarter regardless of dollar amount, except as provided for in paragraph (d) of this section, will continue to require the approvals specified in § 8-4.803-4. All such actions will be forwarded through the Assistant Deputy Administrator for Procurement and Supply (93) for review and concurrence.

(d) Advisory board memberships duly established under the authorities contained in Title 38 U.S.C. and peer review of research proposals may be approved by department and staff office heads during the fourth quarter without further review by the Administrator. However, those actions pertaining to board memberships and peer review of research proposals exceeding the dollar limits for other than travel-related compensation as specified in paragraph (b) will require the approval of the Administrator.

(e) In lieu of the requirements outlined in Appendix A of Part 8-4, justifications for letters of agreement will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services. The justification will also certify that the procurement action will not violate post-employment restrictions prescribed in the Ethics in Government Act and § 8-4.852.

(f) All procurements for consulting services accomplished through letters of agreement will be entered into the agency consolidated listing of consultant contracts in the format prescribed by § 8-4.804, paragraphs (b) and (c). All such log entries applicable to Central Office activities shall be forwarded to the Assistant Deputy Administrator for Procurement and Supply (93). That office shall also be responsible for entering such information pertaining to Central Office letters of agreement into the Federal Procurement Data System.

§ 8-4.804 Contract data reporting.

(a) The contracting officer will take care to report correctly a contract

award for consulting services in the Federal Procurement Data System.

(b) A separate log (in addition to any station contract register) for all consulting services contracts, regardless of dollar value, will be maintained at the procuring activity for management control purposes. Log entries will be made on separate sheets of paper for each contract award and in the following format:

- (1) Contract/obligation number.
- (2) Date of award.
- (3) Requesting service.
- (4) Type of award, i.e., competitive or noncompetitive.
- (5) Name and address of awardee.
- (6) Contract price.
- (7) A short narrative description of the work to be performed.

(c) The contracting officer will forward a copy of each log entry on standard size plain white bond paper to the Assistant Deputy Administrator for Procurement and Supply (93) on a quarterly basis. Log entries should be received in Central Office no later than 15 days after the end of each quarter. Upon receipt of log entries, the Office of Procurement and Supply (93) will immediately enter all submissions into the consolidated listing. Negative responses, if applicable, are required on an annual basis and should be received in Central Office no later than 15 days after the end of the fiscal year.

(d) Upon a change in status of a consultant contract, i.e., termination, modification, extension or completion, the contracting officer will annotate the log entry and resubmit a copy of the entry to the Assistant Deputy Administrator for Procurement and Supply (93).

§ 8-1.851 Organizational conflicts of interest.

§ 8-1.851-1 Basic policy.

The determination that organizational conflicts of interest exist can only be made when facts surrounding individual contracting situations are known. Therefore, it is up to the contracting officer to exercise common sense, good judgment and sound discretion in making such a determination and to take steps to mitigate to

the greatest extent possible organizational conflicts of interest. The contracting officer will be guided by at least two underlying principles. These are that organizational conflicts of interest may result from: (a) Conflicting roles and interests of the contractor, in which case he/she would be unable to give unbiased and objective advice or may otherwise produce a biased work product; or (b) Unfair competitive advantage which exceeds a normal flow of benefits from the award of the contract.

§ 8-1.851-2 Contracting officer responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and/or potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by his/her own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Government. In that case, the contracting officer may set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible, with the approval of the head of the procuring activity.

(d) The contracting officer will, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract and/or the proposed use of subcontractors during the contract.

(e) The following representation will be made a part of all solicitations for consulting services.

ORGANIZATIONAL CONFLICTS OF INTEREST

(a) The offeror represents to the best of his/her knowledge and belief that the award of the contract/would/or/would not/involve organizational conflicts of interest as defined in this representation. The term organizational conflicts of interest shall mean that a relationship exists whereby an offeror or a contractor (including his/her chief executives, directors, proposed consultants and subcontractors) has interests which may (1) diminish his/her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; or (2) result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(b) Based on this representation and any other information solicited by the contracting officer, it may be determined that organizational conflicts of interest exist which would warrant disqualifying the contractor for award of the contract unless the organizational conflicts of interest can be mitigated to the contracting officer's satisfaction by negotiating terms and conditions of the contract to that effect. In the case of a formally advertised solicitation, the apparent successful offeror may enter into a supplemental agreement which mitigates the organizational conflicts of interest.

(c) Nondisclosure or misrepresentation of organizational conflicts of interest at the time of the offer, or arising as a result of a modification to the contract, may result in the termination of the contract at no expense to the Government.

§ 8-4.852 Ethics in Government Act.

(a) Former employees are not specifically prohibited under Section 207 of Title 18, United States Code, from acting as consultants for the Veterans Administration. However, former employees are prohibited, for certain periods of time, from representing or otherwise acting as agents of other parties for the purpose of obtaining Government contracts.

(b) The certification in § 8-1.1250 will be made a part of all solicitations for consulting services and management and professional services contracts.

§ 8-4.853 Management and professional services.

§ 8-4.853-1 Scope.

(a) The controls in this section are applicable to management and professional services, special studies and analyses and management and support services for research and development. Specific types of services to be controlled are listed in Appendix B. Management and support services for research and development are the same services listed in Appendix B when procured with Research and Development funds. However, the controls do not apply to the conduct of research and development.

(b) Services in other than the categories listed in Appendix B are also controlled if covered by the definition in § 8-4.853-2 and either represent unusual, nonroutine requirements or requirements having significant impact on agency operations. Contracting officers will be responsible for making such determinations.

(c) This section does not apply to contracts for the medical, dental and ancillary care of beneficiaries or to contracts for the provision of other services directly to beneficiaries, such as educational services.

§ 8-4.853-2 Definition.

The term "management and professional services" means those services related to the performance of operating functions of an agency, involving knowledge of an advanced type, and requiring the use of discretion and judgment. Management and professional services differ from consulting services in that the latter term refers to services of a purely advisory nature. Both categories of services involve selection of the contractor on the basis of qualifications, rather than price alone, and are therefore normally procured by negotiation.

§ 8-4.853-3 Guidelines for use of contracts for management and professional services.

(a) *Contracts are appropriate when:*
(1) Unusual or peak workloads occur that cannot be accomplished by Government personnel.

(2) Work involved is of an intermittent, occasional, or one-time nature for which the hiring of Government personnel is not feasible.

(3) They result in a more economical method of performing the work. (See OMB Circular A-76, revised.)

(b) *Contracts are inappropriate (improper or illegal) when:* (1) The service involves exercising a Governmental judgment, i.e., managing programs requiring value judgements; selection of priorities; direction of Federal employees; and all regulatory responsibilities.

(2) An employer-employee relationship would be established or involved.

(3) They circumvent personnel salary or ceiling limitations.

§ 8-4.853-4 Approval for use of contractual services.

(a) All contracts controlled by this section require the approval of the Administrator except as provided in paragraph (b) of this section. The procedure to be used in obtaining approval is the same as that required for a consulting service as prescribed in § 8-4.803-4. The format and content of the supporting justification will be the same as that in Appendix A.

(b) Contracts not exceeding \$500 may be approved by the heads of facilities, without higher level review, for requirements emanating at the local level. In Central Office, contracts not exceeding \$500 may be approved at one level above the requesting activity, without higher level review. Supporting justifications will be the same as required in paragraph (a) of this section.

(c) The approvals of officials designated in paragraphs (a) and (b) of this section are in addition to and do not replace the technical and legal reviews of contract documents prior to award prescribed elsewhere in these regulations.

§ 8-4.853-5 Contract administration.

(a) All the basic policy considerations contained in § 8-4.803-1 are applicable to services controlled herein, including the development of work statements which are specific, complete and which specify fixed periods of service and the solicitation of other qualified sources for proposed sole-

source awards emanating from unsolicited proposals.

(b) All responsibilities of contracting officers and their technical representatives as prescribed in § 8-4.803, Contracting requirements, will apply to services controlled by this section, including the monitoring of contractor performance and the final evaluation of end products.

(c) All reporting requirements contained in § 8-4.804, Contract data reporting, are applicable to services controlled by this section.

Subpart 8-4.10—Architect-Engineer Services

SOURCE: 41 FR 3292, Jan. 22, 1976, unless otherwise noted.

§ 8-4.1001 General policy.

The provisions of this subpart pertain to the general policies and procedures for the procurement of professional architect-engineer services as set forth in FPR 1-4.10, and are not applicable to contracts entered into pursuant to the authority of 38 U.S.C. 1820.

§ 8-4.1004 Selection.

§ 8-4.1004-1 Establishment of architect-engineer evaluation boards.

In the case of Central Office contracts, selection will be made by the board appointed by the Assistant Administrator for Construction. Selections made by field stations will be by a board appointed by the station head.

(a) The evaluation board will be chaired by either the Chairman or Vice Chairman of the Architect-Engineer Evaluation Board, or the project director will be designated to act when necessary. The board's members, as appointed by the Assistant Administrator for Construction, will include the appropriate project director or designated project supervisor and as many qualified professional architects or engineers from the Office of Construction technical services as may be considered appropriate for the particular project. Additional members from the Office of Construction Health Care Facilities Service or from other

Veterans Administration departments and staff offices will be designated for special type projects when appropriate.

(b) The evaluation board for a Veterans Administration field station will consist of no less than two members, one of whom will be the senior contracting officer, and the other the Engineer Officer. Where a station has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairman of the board will be the senior engineer.

[41 FR 3292, Jan. 27, 1976, as amended at 43 FR 8258, Mar. 1, 1978]

§ 8-4.1004-2 Functions of the evaluation boards.

(a) The evaluation board will review the data submitted by the firms and from that file will preselect the firms which have the basic qualifications for performing the services needed. The factors stated in the announcement publicizing the proposed procurement (see FPR 1-1.1003-7) will be used in determining whether a firm is qualified for inclusion on the preselection list.

(b) In the evaluation of the qualifications of the firms on the preselection list, the board will perform the functions as outlined in FPR 1-4.1004-2, applying the evaluation criteria set forth in FPR 1-4.1004-3 and that established in § 8-4.1004-3, and will recommend no less than three firms (to the Assistant Administrator for Construction in the case of Central Office contracts, and to the head of the field station in the case of station contracts) for interviews.

(c) After approval (by the Assistant Administrator for Construction or by the station head) of the list of selected firms recommended for interviews, the board will arrange discussions with each firm for the purpose of obtaining information, supplementing that already available, from which to develop, in order of preference, not less than three firms considered the most highly qualified. This recommended listing will be submitted (to the Assistant Administrator for Construction or to the station head, as appropriate) for consideration and approval before

the contracting officer enters into negotiations with the top-rated firm.

§ 8-4.1004-3 Evaluation criteria.

In addition to the evaluation criteria set forth in FPR 1-4.1004-3, the board will consider the factors set forth in this section as they apply to the project or purpose of the selection. Values will be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the preselection process. The values may be confirmed or adjustments may be made as a result of the discussions.

(a) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.

(b) Record of significant claims against the client because of improper or incomplete architectural and engineering services.

(c) Geographic location and facilities of the working office which would provide the professional services.

(d) Specific experience and qualifications of personnel proposed for assignment to the project, and record of working together as a team.

§ 8-4.1004-4 Action by agency head or his authorized representative.

The Assistant Administrator for Construction (for Central Office contracts) and the station head (for field station contracts), or persons acting in that capacity, are designated as the approving officials for the recommendation of the evaluation boards.

§ 8-4.1004-5 Procedure for procurements estimated not to exceed \$10,000.

Either of the procedures provided in FPR 1-4.1004-5 may be used on authorization of the Assistant Administrator for Construction or the station head.

§ 8-4.1005 Negotiation procedures.

§ 8-4.1005-1 General.

Application of the 6-percent fee limitation cited in FPR 1-4.1005-1 is set forth in § 8-4.1050. The policy set forth in that section provides all the

available latitude in the negotiation of the contract price. The policy does not, however, relieve the contracting officer of the responsibility to determine that the fee negotiated is consistent with the services to be performed and the nature of the project. The contract ordinarily will cover all services to be rendered by the firm. To assure that the fee limitation is not violated, the contracting officer will maintain suitable records to be able to isolate the amount in the total fee to which the 6-percent limitation applies.

§ 8-4.1005-4 Architect-engineer's proposal.

VA Form 08-6298, Architect-Engineer Fee Proposal, prescribed in § 8-16.701, is mandatory for obtaining the proposal and supporting cost or pricing data in the negotiation of all architect-engineer contracts for design services when the contract price is \$50,000 or over. The use of VA Form 08-6298 for design contracts less than \$50,000 is at the discretion of the contracting officer. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, VA Form 08-6298 shall also be used but supplemented or modified as needed for the particular project type.

§ 8-4.1005-5 Contract price.

Where negotiations with the top-rated firm are unsuccessful, the contracting officer will terminate the negotiations and undertake negotiations with the firm next in order of preference after authorization by the Assistant Administrator for Construction or by the station head to do so. Recommendation for award of the contract at the negotiated fee will be submitted with a copy of the negotiation report (see FPR 1-4.1005-6) to the Assistant Administrator for Construction or to the station head, as appropriate.

§ 8-4.1050 Application of 6-percent architect-engineer fee limitation.

(a) The 6-percent fee limitation on architect or engineer services set forth in section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended, applies to those services generally required in prepar-

ing working drawings and specifications which form the basis for bidding and for the award of construction contract. The fixed fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to:

(i) Determination of program requirements including schematic or preliminary plans and estimates.

(ii) Determination of feasibility of proposed project.

(iii) Preparation of measured drawings of existing facility.

(iv) Subsurface investigation.

(v) Structural, electrical, and mechanical investigation of existing facility.

(vi) Surveys, Topographic, boundary, utilities, etc.

(2) Special consultant services not normally available in organizations of architects or engineers not specifically applied to the actual preparation of working drawings or specifications of the project for which the services are required.

(3) Other:

(i) Reproduction of approved designs through models, color rendering, photographs, or other presentation media.

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications.

(iii) Supervision or inspection of construction, review of shop drawings or samples and other services performed during the construction phase.

(iv) All other services that are not integrally a part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

(b) The total cost of the architect or engineer services contracted for may not exceed 6 percent of the estimated cost of the construction project plus the estimated cost of related services and activities such as those shown in paragraph (a) of this section. To support project submissions, VA Form 10-1193, EMIS Construction Program—Application for Health Care Facility Project, and VA Form 10-6238, EMIS

Construction Program—Estimate Worksheet, will be used and the applicable proposed technical services shown in detail.

[34 FR 13925, Aug. 30, 1969, as amended at 44 FR 59529, Oct. 16, 1979]

§ 8-4.1051 Application of Small Business Act.

The provisions of the Small Business Act are applicable to the procurement of architect-engineering services. Consequently, consideration of procurement set-asides for small business and/or labor surplus area concerns will be made in accordance with § 8-1.706.

[44 FR 59529, Oct. 16, 1979]

Subpart 8-4.51—Mortuary Services**§ 8-4.5101 General.**

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of the Veterans Administration, as provided in 38 U.S.C. 903.

[33 FR 6293, Apr. 23, 1968]

§ 8-4.5102 Funeral authorization.

(a) When a veteran dies while receiving care in a Veterans Administration health care facility or in a non-Veterans Administration institution at Veterans Administration expense and the decedent's remains are unclaimed, the Chief, Medical Administration Service, will forward to the Chief, Supply Service, a properly executed VA Form 10-2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured. Burial will be made in the nearest National Cemetery having available gravespace.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of \$300. This service will consist of:

- (1) Preparation of the body, embalming.
- (2) Clothing.

(3) Casket.

(4) Securing all necessary permits.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 903(a)(2). This allowance will cover the transportation cost of shipment of the body by common carrier or by hearse from the VA facility to the funeral home and to the place of burial, any charges for an outside (shipment) box, and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the \$300 allowance.

[46 FR 33032, June 26, 1981]

§ 8-4.5103 Administrative necessity.

(a) When persons die under Veterans Administration care who are not legally entitled to such care at Veterans Administration expense, and no relatives or friends will claim the remains, and the municipal, county or State officials refuse to provide for final disposition, arrangements will be made and expenses assumed for burial locally under separate contractual agreement.

(b) When a full and complete funeral and burial service cannot be obtained by the contracting officer within the statutory allowance, he/she will, prior to taking any further action, secure from the head of the station a written determination that the disposition of the remains must be accomplished by the Veterans Administration as an administrative necessity. The head of the station will also authorize in writing the expenditure of such additional funds as may be necessary for this purpose. The amount of these additional funds will be held to the minimum, keeping in mind, however, that the deceased must be given a proper and fitting interment.

(c) The determination and authorization by the head of the station will be made a part of the contract file.

[42 FR 6368, Feb. 2, 1977]

§ 8-4.5104 Unclaimed remains—all other cases.

Requests for information on the disposition of the unclaimed remains of a

veteran whose death occurs while not under the direct care or treatment of the Veterans Administration will be referred to the Veterans Services Officer for processing in accordance with Manual M27-1, Part II. This manual is available at any Veterans Administration regional office, medical center or VA office.

[44 FR 59529, Oct. 16, 1979]

APPENDIX A—INFORMATION TO BE INCLUDED IN REQUESTS FOR CONTRACTUAL SERVICES

Requests for approval to procure contractual services, whether with individuals or firms, must contain statements on the following items where applicable. Items other than those listed may be added to clarify or justify the request.

Problem or Project

1. Description of the problem or project.
2. Length of time this problem or condition has existed.
3. Effect on the mission should the problem continue to exist.
4. Specific examples of losses or excessive costs caused by the problem.
5. Whether the proposed study or project is a small segment of much greater project. If so, elaborate on the complete study or project and state what action will be taken concerning the overall project when this segment is completed.
6. Alternative approaches available to perform this work, and reasons for eliminating each approach.
7. Previous attempts to solve the problem or perform the work and their results, with an explanation why they were unsuccessful if that was the case.
8. Results or end products sought. End products can be as simple as a report containing recommendations, or as lengthy and detailed as a completely installed system for management.
9. Efforts made to determine if similar studies or other sources of information already exist, and whether this proposed effort duplicates other efforts known to have taken place or which are ongoing.
10. Whether a lack of equipment has a bearing on this problem. If so, what attempts were made to remedy the situation?
11. Type of skills required to solve problem or accomplish the project.

Personnel

12. Whether a shortage of qualified personnel has a bearing on the problem. If so, what attempts were made to remedy the situation?

13. Number of in-service personnel by descriptive title to be made available to work with the contractor.

14. If the services of a specific individual are requested, specific reasons why this individual or another equally competent individual cannot be temporarily employed as authorized in personnel regulations.

15. If a request is for a specific individual, reasons for selecting that person over other suitable persons. List of other suitable persons, or explanation if there are none.

Firms

16. If a specific firm is recommended, reasons for selecting it over other suitable firms, or explanation if there are none.

Cost of Contract and Funds

17. Estimated cost of contract.
18. Identification of funds to be used to pay for contract.

Attachments

19. Copies of staff studies and papers bearing on the problem.
20. Copy of proposed contract work statement.

Automated Data Processing

21. If the request includes a requirement for services related to ADP, a copy of a completed and approved GSA Form 2068, Request for ADP Services (FPMR 101-36.2).

Evaluation

22. The methodology by which contractor performance will be monitored including how departures from the original contract specifications will be documented and approved.
23. The methodology by which the final product will be evaluated and by whom.

Advance Procurement Planning

24. Does the requirement fall within the activity's advance procurement plan, and if not, why?

[47 FR 25529, June 14, 1982]

APPENDIX B—MANAGEMENT AND PROFESSIONAL SERVICES, SPECIAL STUDIES AND ANALYSES, AND MANAGEMENT AND SUPPORT SERVICES FOR RESEARCH AND DEVELOPMENT

Federal Procurement Data System

Service Code and Category

- Management and Professional Services:
 R402—Management Data Collection Services
 R405—Operations Research Services

- R406—Policy Review/Development Services
- R407—Program Evaluation Services
- R408—Program Management/Support Services
- R409—Program Review/Development Services
- R410—Public Relations Services
- R412—Simulations
- R413—Specifications Development Services (Nonconstruction)
- R498—Other Professional Services
- R499—Other Management Services
- Special Studies and Analyses:
 - R501—ADP Systems Analyses
 - R505—Cost Benefit Analyses
 - R507—Economic Studies and Analyses
 - R513—Feasibility Studies (Nonconstruction)
 - R521—Historical Studies
 - R523—Legislative Studies
 - R524—Mathematical/Statistical Analyses
 - R527—Recreation Studies
 - R528—Regulatory Studies
 - R529—Scientific Data Studies (Nonmedical)
 - R531—Socio-Economic Studies
 - R537—General Health Studies
 - R599—Other Special Studies and Analyses

[47 FR 25529, June 14, 1982]

PART 8-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Subpart 8-5.50—Procurement Under the Economy Act From or Through Another Federal Agency

Sec.

- 8-5.5000 Scope.
- 8-5.5001 Authorization and policy relating to placing and filling orders.
- 8-5.5002 Interagency support agreement.
- 8-5.5003 Field contract support cross-servicing program.

AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 38; U.S.C. 210, 40 U.S.C. 486(c).

Subpart 8-5.50—Procurement Under the Economy Act From or Through Another Federal Agency

§ 8-5.5000 Scope.

This subpart prescribes the Veterans Administration policy and procedures in placing orders with another Government department or agency for material, supplies, equipment, work or services of any kind pursuant to the authority of the Economy Act of June 30, 1932, as amended (31 U.S.C. 686). This subpart is not applicable to estab-

lished sources of supply prescribed in FPMR 101-26 (41 CFR 101-26)

[42 FR 61043, Dec. 1, 1977]

§ 8-5.5001 Authorization and policy relating to placing and filling orders.

The obtaining of products and services from another Government agency under the authority of the Economy Act requires a finding that such products or services cannot be as conveniently or more cheaply performed by private agencies. In obtaining from another Government agency those products and services that are commercial in nature, OMB Circular NO. A-76 (as amended) provides additional guidelines which must be followed. The circular, however, is not applicable to hospital, domiciliary and medical care covered by Chapter 17 of Title 38, U.S.C., or to formal program for managing excess capacity. (Transmittal Memorandum No. 4 of March 29, 1979, to OMB Circular No. A-76 and Supplement No. 1 to that circular, Cost Comparison Handbook, have been distributed to all field stations.)

[45 FR 7814, Feb. 5, 1980]

§ 8-5.5002 Interagency support agreement.

(a) An interagency support agreement is a written instrument of understanding executed between the parties to the agreement. The agreement should state clearly the accord which has been reached between the two parties involved, especially the obligations assumed by the rights granted each. The agreement will be specific with respect to resources to be provided by both the supplying and receiving activities. It will also provide for funding and reimbursement arrangements, and clauses permitting revisions, modifications thereto, or cancellation thereof, will be included.

(b) Requirements for support services available from any other Government department or agency will be obtained on the basis of an approved negotiated interagency support agreement.

(c) Proposed interagency support agreements with any other Government department or agency involving the expenditures of Veterans Admin-

stration funds of \$5,000 or more will be forwarded by the approving official to the Director, Supply, Service, for legal review and approval, as required by § 8-1.403-52(a)(3).

(1) Proposed agreements, both new and renewal, will be submitted in an original and four copies so as to reach Central Office 60 days prior to the effective date of the agreement.

(2) Complete justification for all proposed agreements will be submitted, as approval depends on the adequacy of the justification.

[42 FR 61043, Dec. 1, 1977, as amended at 45 FR 7814, Feb. 5, 1980]

§ 8-5.5003 Field contract support cross-servicing program.

(a) Pursuant to the Government program to foster interagency cross-servicing in field contract support services, contracting officers of the Veterans Administration will utilize the support services of other agencies to the extent feasible. Examples of such services are: Preaward surveys; quality assurance and technical inspection of contract items; and review of contractors' procurement systems.

(1) A Federal Contract Administration Cross-Servicing Directory is published by the Department of Defense, and will be distributed to contracting offices through the Veterans Administration Forms and Publications Depot.

(2) Requests for contract audit services will be transmitted to the Director, Contract and Special Audit Service (52C), in accordance with § 8-3.807-3(b) and (c). At the Director's discretion, the contract audit will either be performed by his/her staff or arranged with a support audit agency. All related contracts with the support audit agency will be made through the Director, Contract and Special Audit Service.

(b) Reimbursement for any charges for services obtained under cross-servicing arrangements will be made from funds available for the related contract. The hourly rate established under the cross-servicing agreement of

the Department of Defense and the National Aeronautics and Space Administration may be employed to facilitate reimbursement arrangements (ref. Policy Letter No. 78-4, August 8, 1978, Office of Federal Procurement Policy).

(c) Both the requesting and supporting activities are responsible for prudent use of support services provided under cross-servicing arrangements. Accordingly, servicing activities will, when deemed appropriate, counsel the requesting agency concerning the desirability and practicality of relaxing or waiving any controls or surveillance not necessary to ensure satisfactory performance of contracts.

[45 FR 7814, Feb. 5, 1980]

PART 8-6—FOREIGN PURCHASES

Subpart 8-6.1—Buy American Act—Supply and Service Contracts

Sec.

8-6.103 Exceptions.

8-6.103-2 Nonavailability in the United States.

8-6.104 Procedures.

8-6.104-3 Certificate.

8-6.104-4 Evaluation of bids and proposals.

8-6.105 Excepted articles, materials and supplies.

Subpart 8-6.52—Clearance of Veterans Administrative Shipments Through Customs

8-6.5200 Scope of subpart.

8-6.5201 Procedure.

Subpart 8-6.54—Duty-free Importation of Goods

8-6.5400 Scope of subpart.

8-6.5401 General.

8-6.5402 Application for duty-free importation of goods.

8-6.5403 Transfer of items approved for duty-free entry.

8-6.5404 Technical assistance.

AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 390; 38 U.S.C. 210, 40 U.S.C. 486(c).

**Subpart 8-6.1—Buy American Act—
Supply and Service Contracts**

SOURCE: 32 FR 12792, Sept. 7, 1967, unless otherwise noted.

§ 8-6.103 Exceptions.**§ 8-6.103-2 Nonavailability in the United States.**

(a) If articles, materials, and supplies required for a particular procurement are not excepted in § 8-6.105, or when only foreign bids or offers are received, the determination concerning nonavailability required by FPR 1-6.103-2 will be made by the contracting officer, factually supported in writing, and included in the contract file.

(b) A copy of the determination will be forwarded to the Director, Supply Service. When appropriate, the item will be added to the list of excepted articles, materials and supplies contained in § 8-6.105.

§ 8-6.104 Procedures.**§ 8-6.104-3 Certificate.**

Invitations for bids and requests for proposals shall provide that a list of articles, materials and supplies which have been determined to be excepted from the "Buy American Act" is available to prospective contractors upon request.

§ 8-6.104-4 Evaluation of bids and proposals.

(a) When a determination is required under FPR 1-6.104-4(b), or when the contracting officer considers it in the public interest to reject a bid under FPR 1-6.104-4(c), the proposed award will be submitted through channels to the Director, Supply Service, for approval of the Administrator. The submission will contain all the facts, including a comparison of all the bids or offers received, and any other pertinent information upon which a determination may be made. If approved, a report of the transaction will be prepared and submitted by the Director, Supply Service, in accordance with Executive Order 10582, dated December 17, 1954, as amended.

(b) [Reserved]

(c) In the procurement of end products in accordance with Subpart 8-3.6 of this chapter, preference will be given to domestic source end products, unless the Contracting Officer determines that such products, of a satisfactory quality, are excessive in price. The VA Form 07-2237 will be documented to show each such determination.

[30 FR 4675, Apr. 10, 1965, as amended at 32 FR 12792, Sept. 7, 1967]

§ 8-6.105 Excepted articles, materials, and supplies.

Pursuant to the "Buy American Act," the Director, Supply Service has determined that the articles, materials, and supplies listed in this section may be acquired by the Veterans Administration without regard to source, except as provided in Subpart 8-6.53.

Acetylene, black.
Agar, bulk.
Anise.
Antimony, as metal or oxide.
Asbestos, amosite.
Bananas.
Beef, corned, canned.
Beef extract.
Bephenium hydroxynaphthoate.
Bismuth.
Books, trade, text, technical or scientific; newspapers; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Brazil nuts.
Cadmium ores and flue dust.
Calcium cyanamide.
Capers.
Cashew nuts.
Castor beans.
Chalk, English.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary forms.
Cocoa beans.
Coconut and coconut meat in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Colchicine alkaloid, raw.
Copra.
Cork, wood or bark and waste.
Dammar gum.
Diamonds, industrial.
Emetine, bulk.
1-Ephedrine.
Ergot, crude.
Erythrityl tetranitrate.

Fiber, coir, abaca, and agave.
 Flax.
 Goat and kid skins.
 Graphite, natural, crystalline, crucible grade.
 Hemp.
 Hog bristles for brushes.
 Hyoscine, bulk.
 Iodine, crude.
 Ipecac, root.
 Jute and jute burlaps.
 Kaurigum.
 Lac.
 Lavender oil.
 Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, green-heart, lignum vitae, mahogany, and teak.
 Manganese.
 Menthol, natural, bulk.
 Mica.
 Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
 Nitroguanidine (also known as picrite).
 Nux vomica, crude.
 Oiticica oil.
 Olive oil.
 Olives, green; plain (unpitted) and stuffed, bulk.
 Opium, crude.
 Oranges, mandarin, canned.
 Petroleum, crude oil; petroleum, finished products; and petroleum, unfinished oils.
 Pine needle oil.
 Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars.
 Pyrethrum flowers.
 Quartz crystals.
 Quebracho.
 Quinidine.
 Quinine.
 Radium salts.
 Rubber, crude and latex.
 Rutile.
 Santonin, crude.
 Secretin.
 Shellac.
 Silk, unmanufactured.
 Sisal.
 Sperm oil.
 Spices and herbs.
 Sugar.
 Talc, block, steatite.
 Tapioca, tapioca flour and cassava.
 Tartar, crude, tartaric acid and cream of tartar.
 Tea.
 Thyme oil.
 Tin, in bars, blocks, and pigs.
 Triprolidine hydrochloride.

Tungsten.
 Vanilla beans.
 Wax, carnauba.

[35 FR 18375, Dec. 3, 1970]

Subpart 8-6.52—Clearance of Veterans Administration Shipments Through Customs

SOURCE: 35 FR 12341, Aug. 1, 1970, unless otherwise noted.

§ 8-6.5200 Scope of subpart.

This subpart sets forth procedures to be employed by Veterans Administration contracting officers to clear shipments through customs, without employing an outside customs broker.

§ 8-6.5201 Procedure.

(a) When a field station is advised by the Bureau of Customs, Treasury Department that a foreign origin shipment, consigned to the station, has arrived at the customhouse, the contracting officer will request customs Form 3461, Application and Special Permit for Immediate Delivery, from the collector of customs. This form may be completed on an individual basis. If, however, the number of such purchases during the year warrants it, the form will be completed on a yearly basis in compliance with customs requirements.

(b) On receipt of the customs Form 3461, the collector of customs will furnish the contracting officer with necessary instructions to follow to secure the shipment. He will also, in the absence of other objections, clear the shipment for delivery. Should a duty be payable on the merchandise, a bill covering such charges will be forwarded to the station. (19 CFR 8.28(c), 8.59). This procedure will obviate the need to secure the services of an outside customs broker.

Subpart 8-6.54—Duty-free Importation of Goods

SOURCE: 35 FR 11471, July 17, 1970, unless otherwise noted.

§ 8-6.5400 Scope of subpart.

This subpart prescribes the procedures for securing the duty-free importation of certain goods to be used for educational and scientific purposes.

§ 8-6.5401 General.

(a) Scientific instruments and apparatus may be imported duty-free for use in a scientific or educational institution when no instruments or apparatus of equivalent scientific value for the intended purpose are being manufactured in the United States.

(b) The Office of Import Programs (OIP) is responsible for determining if items meet the established criteria outlined in paragraph (a) of this section.

[35 FR 11471, July 17, 1970, as amended at 37 FR 16938, Aug. 23, 1972]

§ 8-6.5402 Application for duty-free importation of goods.

(a) An application, Form OIPF 768, will be prepared for each item of duty-free instruments or apparatus requested or to be requested. Form OIPF 768 will be prepared in seven copies and submitted to the Commissioner of Customs, Attention: Tariff Classification Ruling, Washington, D.C. 20226. This application may be submitted prior to purchase of an item (based on a firm intention to buy) or it may be submitted subsequent to the placing of the order. When the application is filed prior to the issuing of an order, the order must be placed on or before the 60th day following the date on which a decision by OIP becomes final.

(1) The application will list all pertinent characteristics and specifications of the foreign made item which, in the opinion of the prospective user, make it superior in scientific value to a similar item of domestic origin.

(2) The application must also explain why an item of these characteristics and specifications is required to accomplish the purpose for which the item is to be used.

(b) The Commissioner of Customs will:

(1) Forward copies of the application to the Office of Import Programs, and

(2) Return one copy to the Veterans Administration station filing the request. This copy will be stamped as accepted for transmittal to the Department of Commerce. The Veterans Administration station making the application will in turn file this copy with the Director of Customs of the district in which the item has been or will be entered.

(c) The Office of Import Programs will publish a notice of the application in the *FEDERAL REGISTER*. Equipment manufacturers and other interested parties will be given 20 days to present information on scientific instruments or apparatus of domestic manufacture which they feel have equivalent scientific value to the item of foreign make. At the end of 20 days OIP will evaluate any comments received from interested parties, and decide if the item may enter duty-free. This decision will also be published in the *FEDERAL REGISTER*. If no appeal is made within 20 days from the date of publication, the Office of Import Programs will notify the Director of Customs of the applicable district of the decision. If the applicable district is not known, the Office of Import Programs will notify the Commissioner of Customs.

[37 FR 16938, Aug. 23, 1972]

§ 8-6.5403 Transfer of items approved for duty-free entry.

(a) An item admitted on a duty-free basis may be transferred through normal excess procedures to another scientific or educational institution without payment of duty.

(b) If an item entered on a duty-free basis is subsequently transferred to other than a scientific or educational institution or is used for commercial purposes within 5 years after entry, the VA field station which secured the duty-free entry must immediately notify customs officers at the port of entry. Upon such transfer or diversion to commercial use within the specified time, the VA field station originally securing the duty-free entry becomes liable for payment of the original duty applicable to its importation.

§ 8-6.5404 Technical assistance.

Field stations seeking to take advantage of this exemption for a specific procurement will submit to the Manager, VA Marketing Center, Hines, Ill., a letter setting forth in detail the specific circumstances that make such a procurement necessary. The Manager, VA Marketing Center will render to the station advice and technical assistance and, where appropriate, furnish the required forms for filing an application with OIP. Forms are available to the VA Marketing Center from the Deputy Assistant Secretary for Resources, Department of Commerce, field offices, or custom ports.

[37 FR 16939, Aug. 23, 1972]

PART 8-7—CONTRACT CLAUSES**Subpart 8-7.1—Fixed-Price Supply Contracts**

Sec.

- 8-7.100 Scope of subpart.
- 8-7.101 Applicability.
- 8-7.102 Required clauses.
- 8-7.102-5 Inspection.
- 8-7.150 Clauses to be used when applicable.
- 8-7.150-2 Purchases for patients using Government funds and/or personal funds of patients.
- 8-7.150-3 Purchases from patient's funds.
- 8-7.150-4 Estimated quantities for requirements contracts.
- 8-7.150-5 Fixed-price service contracts.
- 8-7.150-6 Frozen processed foods.
- 8-7.150-7 Change in rates for public utilities.
- 8-7.150-8 Technical industry standards.
- 8-7.150-9 Bread and bakery products.
- 8-7.150-10 Representatives of Contracting Officers.
- 8-7.150-11 Patent indemnification.
- 8-7.150-12 Visits to Veterans Administration Guidance Centers.
- 8-7.150-13 Time spent by counselee in counseling process.
- 8-7.150-14 Use and publication of counseling results.
- 8-7.150-15 Termination for convenience of the Government.
- 8-7.150-16 Commercial advertising.
- 8-7.150-18 Telecommunications equipment.
- 8-7.150-21 Purchase of shell fish.
- 8-7.150-22 Services provided eligible beneficiaries.
- 8-7.150-23 Noncompliance with packaging, packing, and/or marketing requirements.

Sec.

- 8-7.150-24 Requirements for operating and maintenance manuals.
- 8-7.150-25 Guarantee clause.

Subpart 8-7.6—Fixed-Price Construction Contracts

- 8-7.600 Scope of subpart.
- 8-7.650 Clauses for fixed-price construction contracts estimated to exceed \$10,000.
- 8-7.650-1 Bond premium adjustment.
- 8-7.650-2 Specifications and drawings.
- 8-7.650-3 Work to be executed by contractor's forces.
- 8-7.650-4 Bonds.
- 8-7.650-5 Inspection and acceptance.
- 8-7.650-6 Guaranty.
- 8-7.650-7 Correspondence.
- 8-7.650-8 Reference to "Standards."
- 8-7.650-9 Government supervision.
- 8-7.650-10 Daily report of workmen and material.
- 8-7.650-12 Subcontracts and work coordination.
- 8-7.650-13 Work coordination (alternate provision).
- 8-7.650-14 Payments to contractors.
- 8-7.650-15 Schedule of work progress.
- 8-7.650-16 Supplementary labor standards provisions.
- 8-7.650-19 Workmen's compensation laws.
- 8-7.650-20 Safety requirements.
- 8-7.650-21 Contract changes.
- 8-7.650-22 Removal of debris and final cleanup.
- 8-7.651 Clauses for fixed-price construction contracts estimated to exceed \$2,000 but not to exceed \$10,000.
- 8-7.651-1 Bond premium adjustment.
- 8-7.651-2 Rights reserved.
- 8-7.651-3 Inspection and acceptance.
- 8-7.651-4 Reference to "Standards."
- 8-7.651-5 Workmen's compensation laws.
- 8-7.651-6 Safety requirements.
- 8-7.651-7 Contract changes.
- 8-7.651-8 Payrolls and basic records.
- 8-7.651-9 Government supervision.
- 8-7.651-10 Guaranty.
- 8-7.651-11 Protection of property.
- 8-7.651-12 Bonds.
- 8-7.652 Clauses for fixed-price construction contracts estimated not to exceed \$2,000.
- 8-7.652-1 Rights reserved.
- 8-7.652-2 Reference to "Standards."
- 8-7.652-3 Workmen's compensation laws.
- 8-7.652-4 Safety requirements.
- 8-7.652-5 Protection of property.

Subpart 8-7.51—Cost Reimbursement Type Contracts for Education and Rehabilitation

- 8-7.5100 Scope of subpart.
- 8-7.5101 Clauses to be used when applicable.

Sec.

- 8-7.5101-1 Assignment of claims.
- 8-7.5101-2 Default.
- 8-7.5101-3 Disputes.
- 8-7.5101-4 Notice and assistance regarding patent and copyright infringement.
- 8-7.5101-5 Buy American Act.
- 8-7.5101-6 Convict labor.
- 8-7.5101-7 Contract Work Hours and Safety Standards Act—overtime compensation.
- 8-7.5101-8 Equal opportunity.
- 8-7.5101-9 Officials not to benefit.
- 8-7.5101-10 Inspection.
- 8-7.5101-11 Extensions of contract period.
- 8-7.5101-12 Examination of records by Comptroller General.
- 8-7.5101-13 Listing of employment openings.

AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 390; 38 U.S.C. 210, 40 U.S.C. 486(c).

Subpart 8-7.1—Fixed-Price Supply Contracts**§ 8-7.100 Scope of subparts.**

This subpart sets forth contract clauses for use in fixed price supply contracts in addition to, or in lieu of, those in FPR 1-7.1.

[28 FR 2338, Mar. 12, 1963]

§ 8-7.101 Applicability.

(a) Additional clauses which implement or supplement those in FPR 1-7.1 and this subpart may be developed by the contracting officer when deemed essential to the procurement of Veterans Administration requirements. Such clauses will be processed for legal review in accordance with § 8-1.403-52.

(b) Clauses inconsistent with those in FPR 1-7.1 and this subpart, but considered essential to the procurement of Veterans Administration requirements, may be used as provided in the deviation procedure set forth in § 8-1.109.

(c) As prescribed forms may not be altered, except when specifically authorized, clauses used under the provisions of paragraphs (a) and (b) of this section will be included either in the schedule or continuation sheets or in supplementary general provisions.

[39 FR 38378, Oct. 31, 1974]

§ 8-7.102 Required clauses.**§ 8-7.102-5 Inspection.**

(a) Contracts for property, other than packing house and dairy products and fresh and frozen fruits and vegetables will contain the following clause as an amendment to SF 32:

Rejected goods will be held subject to Contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the Contractor's address at his/her risk and expense. Expenses incident to the examination and testing of materials or supplies which have been rejected will be charged to the Contractor's account. (Clause 5b, General Provisions SF 32 is amended accordingly.)

(b) Contracts for packinghouse and dairy products, bread and bakery products and for fresh and frozen fruits and vegetables will contain the following clause, as an amendment to clause 5, SF 32.

The contractor shall remove rejected supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Veterans Administration will not be responsible for nor pay for products rejected. The contractor will be liable for costs incident to examination of rejected products.

[28 FR 2338, Mar. 12, 1963, as amended at 32 FR 7268, May 16, 1967. Redesignated and amended at 39 FR 38378, Oct. 31, 1974]

§ 8-7.150 Clauses to be used when applicable.

The clauses contained in this section will be included in fixed price supply contracts under the conditions set forth in connection with each clause.

[28 FR 2338, Mar. 12, 1963]

§ 8-7.150-2 Purchases for patients using Government funds and/or personal funds of patients.

When contracts are for items to be purchased from both Government funds and personal funds of patients, the following clause will be included as a part of the Federal, State, and local tax clause in FPR 1-11.4

SALES OR USE TAXES

Any article purchased from this contract, payable from personal funds of patients, will be subject to any applicable sales or use tax levied thereon by any State, or by duly constituted taxing authority therein having jurisdiction to levy such a tax; the total amount of the tax applicable to such purchase payable from personal funds of patients will be computed on the total amount of the order and will be shown as a separate item on the purchase order and invoice. The bidder shall identify the applicable taxes and rates in his/her bid.

[39 FR 38378, Oct. 31, 1974]

§ 8-7.150-3 Purchases from patient's funds.

When contracts are for items to be purchased solely from personal funds of patients, the following tax clause will be used in lieu of the Federal, State and Local tax clause in FPR 1-11.4:

SALES OR USE TAXES

The articles listed in this bid invitation will be purchased from personal funds of patients and prices bid herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, applicable to the material in this bid.

[28 FR 2338, Mar. 12, 1963]

§ 8-7.150-4 Estimated quantities for requirements contracts.

(a) When definite quantities cannot be determined invitations, solicitation for station-level requirements contracts will contain the applicable clause as set forth below. Solicitations issued by the Marketing Center will contain provisions developed by that Center for particular application to its operations, subject to legal review as prescribed in § 8-1.403-51(c)(1).

(b) The following clause will be used for general equipment, supplies and services.

ESTIMATED QUANTITIES

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles or services that may be ordered during the contract term, except as he/she otherwise indicates in his/her bid and except as otherwise provided herein. Bids will be considered if made with the pro-

viso that the total quantities delivered shall not exceed a certain specified quantity. Bids offering less than 75 percent of the estimated requirement or which provide that the Government shall guarantee any definite quantity, will not be considered. The fact that quantities are estimated shall not relieve the Contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Veterans Administration shall not be relieved of its obligation to order from the Contractor all articles or services that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(c) The following clause will be used in local coal-hauling contracts:

ESTIMATED QUANTITY

The estimated requirements shown in this invitation for bids cover the requirements for the entire contract period. It is understood and agreed that during the period of this contract the Government may order and the contractor will haul such coal as may, in the opinion of the Government, be required, except that in the public exigency procurement may be made without regard to this contract.

(d) The following clause will be used for orthopedic, prosthetic, and optical supplies.

QUANTITIES

The supplies and/or services listed in the attached schedule will be furnished at such time and in such quantities as they are required.

[28 FR 2338, Mar. 12, 1963, as amended at 33 FR 14701, Oct. 2, 1968; 41 FR 48517, Nov. 4, 1976]

§ 8-7.150-5 Fixed-price service contracts.

(a) Fixed-price negotiated or advertised service contracts, other than architect-engineer and ambulance service contracts, will include the following clause:

CONTRACTOR'S RESPONSIBILITIES

The Contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, or others, as well as for any damage to personal or public property that occurs during the performance of this

contract that is caused by his/her or his/her employee's fault or negligence. The contractor shall maintain personal liability and property damage insurance prescribed by the laws of the State of———. (Insert the applicable State jurisdiction.)

(b) Ambulance service contracts will contain the indemnification clause set forth in § 8-10.451.

[34 FR 15753, Oct. 11, 1969, as amended at 39 FR 38379, Oct. 31, 1974; 46 FR 22757, Apr. 21, 1981]

§ 8-7.150-6 Frozen processed foods.

(a) The following clause will be included in all solicitations for the purchase of frozen processed foods, issued by the Veterans Administration Marketing Division for Subsistence:

FROZEN PROCESSED FOODS

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 0° Fahrenheit or lower.

(b) The following clause will be included in all solicitations for the purchase of frozen processed foods, issued by a field station:

FROZEN PROCESSED FOODS

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 10° Fahrenheit or lower.

(c) Field stations, when utilizing VA Form 60-2138 (or 90-2138), Order for Supplies and Services, to procure items of this nature in the open market, will amend the terms and conditions on the reverse thereof to include the clause shown in paragraph (b) of this section. (38 U.S.C. 210(c); 40 U.S.C. 486(c).)

[37 FR 1234, Jan. 27, 1972, as amended at 46 FR 22757, Apr. 21, 1981]

§ 8-7.150-7 Change in rates for public utilities.

When a contract covers services to be rendered by a public service corpo-

ration, and the rates charged for such services are regulated by a Federal, State, or municipal commission, the following clause will be included.

CHANGE IN RATES

The rates specified herein are not in excess of those charged the general public for similar service and will be increased or decreased when such action is approved by the governing regulatory commission.

[29 FR 12874, Sept. 12, 1964]

§ 8-7.150-8 Technical industry standards.

Where items are required to conform to technical industry standards, such as those adopted by Underwriters' Laboratories, Incorporated; Factory Mutual Laboratories; American Gas Association; American Society Mechanical Engineers; National Electrical Manufacturers' Association; American Society Heating, Refrigeration and Air Conditioning Engineers; or similar organizations where such standards are generally recognized and accepted in the industry involved, the invitation for bids, request for proposals or request for quotations will so state. In no instance, where there is a multiple choice of laboratories, shall the invitation for bid, request for proposal or request for quotation indicate that the label or certificate of only one such laboratory is acceptable. The following clause will be used unless comparable provisions are contained in the item specification.

TECHNICAL INDUSTRY STANDARDS

The supplies or equipment required by this invitation for bid or request for proposal must conform to the standards of the ———— and ———— as to ————. The successful bidder or offeror will be required to submit proof that the item(s) he furnishes conforms to this requirement.

This proof may be in the form of a label or seal affixed to the equipment or supplies, warranting that they have been tested in accordance with and conform to the specified standards. The seal or label of any nationally recognized laboratory such as those listed by the National Fire Protection Association, Boston, Mass., in the current edition of their publication "Research on Fire", is acceptable. Proof may also be furnished in the form of a certificate from one of these laboratories certifying that the item(s) fur-

nished have been tested in accordance with and conform to the specified standards.

¹ Insert name(s) of organization(s) the standards of which are pertinent to the Government's needs.

² Insert pertinent standards, i.e., fire and casualty, safety and fire prevention, sanitation, etc.

[29 FR 12874, Sept. 12, 1964, as amended at 32 FR 3773, Mar. 7, 1967]

§ 8-7.150-9 Bread and bakery products.

The following clause will be inserted in all contracts for bread and bakery products:

The bidder agrees to furnish up to 25 percent more or 25 percent less than the quantities awarded when ordered by the Veterans Administration.

[32 FR 7268, May 16, 1967]

§ 8-7.150-10 Representatives of Contracting Officers.

Whenever it is considered necessary to designate a representative under § 8-52.105, the following provision will be made a part of the request for proposal or invitation to bid:

Representatives of Contracting Officers

The Contracting Officer reserves the right to designate representatives to act for him in furnishing technical guidance and advice or generally supervise the work to be performed under this contract. Such designation will be in writing and will define the scope and limitations of the designee's authority. A copy of the designation shall be furnished the contractor.

[29 FR 7548, June 12, 1964]

§ 8-7.150-11 Patent indemnification.

(a) The following clause will be included in contracts for supplies when such supplies or component parts thereof (or such supplies or component parts from relatively minor modifications to be made thereto), normally are or have been offered for sale by any supplier to the public in the commercial open market. This clause is in addition to Article 13, Standard Form 32, General Provisions (Supply Contract):

If the amount of this contract is in excess of \$5,000 the contractor shall indemnify the Government, its officers, agents, and employees against liability including cost and expenses, for infringement of any United States letter patent (except those kept

secret or otherwise ordered withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies under this contract or out of the use or disposal by or for the account of Government of such supplies. The Government shall inform the contractor as soon as practicable after institution of a suit or action alleging such infringement, and shall give the contractor such opportunity to participate in the defense as is afforded by all applicable laws, rules and regulations. The foregoing indemnity shall not apply if the claimed infringement is settled without the consent of the contractor, unless required by decree of a court of competent jurisdiction.

(b) The clause in paragraph (a) of this section will not be included in those contracts wherein the Veterans Administration is required to take possession of the property outside the United States or the Commonwealth of Puerto Rico, except when its use is approved by the Director, Supply Service (134C).

[29 FR 7548, June 12, 1964, as amended at 31 FR 14878, Nov. 24, 1966]

§ 8-7.150-12 Visits to Veterans Administration Guidance Center.

The following clause will be included in contracts entered into for services relating to vocational counseling:

Any duly authorized representative of the Veterans Administration shall at all reasonable times be permitted to inspect the counseling and testing operations being performed under this contract and the records of these operations.

[30 FR 7600, June 11, 1965]

§ 8-7.150-13 Time spent by counselee in counseling process.

Insert the following clause in contracts entered into for services relating to vocational counseling:

The contractor agrees that no counselee referred under the provisions of this agreement will be required to give any extra time in connection with the counseling process to supply test results or other information for purposes other than those specified in this contract.

[30 FR 7600, June 11, 1965]

§ 8-7.150-14 Use and publication of counseling results.

Insert the following clause in contracts entered into for services relating to vocational counseling:

The contractor agrees that none of the information or data gathered in connection with the services specified in this contract or studies or materials based thereon or relating thereto will be publicized without the prior approval of the Chief Benefits Director or his designee.

[30 FR 7600, June 11, 1965]

§ 8-7.150-15 Termination for convenience of the Government.

The following clause will be included in contracts relating to vocational counseling only in those instances where it is not otherwise possible to consummate a contract:

(a) If the Government terminates all or any part of this contract for the convenience of the Government, the Government will pay such sum as is agreed upon as reasonably necessary to compensate the contractor for loss resulting from commitment to contractor's staff personnel, over a period not to exceed 60 days beyond the effective date of the termination, provided that the contractor will use every effort to relocate the staff personnel in other employment immediately following termination; any agreement hereunder shall be embodied in the settlement agreement. Should the contractor, after making reasonable effort, be unable to relocate the staff employees in other employment within the 60-day period following termination of service, the causative factors will be explained in the settlement agreement and the Government will pay such sum as is agreed upon as reasonably necessary to compensate the contractor for loss resulting from commitment to contractor's staff within the academic year.

(b) In the event the Contracting Officer and the contractor cannot agree upon a satisfactory settlement agreement, it shall be considered a dispute under the provisions of the disputes clause and will be settled in accordance with the provisions listed therein.

[30 FR 7600, June 11, 1965]

§ 8-7.150-16 Commercial advertising.

All invitations for bids will include the following clause:

COMMERCIAL ADVERTISING

The bidder agrees that if a contract is awarded to him/her, as a result of this solicitation, he/she will not advertise the award of the contract in his/her commercial

advertising in such a manner as to state or imply that the Veterans Administration endorses a product, project or commercial line of endeavor.

[40 FR 48349, Oct. 15, 1975]

§ 8-7.150-18 Telecommunications equipment.

(a) When a detailed purchase description or formal specification is the basis for solicitations for telecommunications equipment as defined in Manual MP-6, Part VIII,¹ solicitations, including those for construction, will include the following clause:

SPECIAL NOTICE

Descriptive literature. The submission of descriptive literature with offers is not required and voluntarily submitted descriptive literature which qualifies the offer will require rejection of the offer.

However, within 5 days after award of contract, the Contractor will submit to the Contracting Officer literature describing the equipment he/she intends to furnish and indicating strict compliance with the specification requirements.

The Contracting Officer will, by written notice to the Contractor within 20 calendar days after receipt of the literature, approve, conditionally approve, or disapprove the equipment proposed to be furnished. The notice of approval or conditional approval will not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval will state any further action required of the Contractor. A notice of disapproval will cite reasons therefor.

If the equipment is disapproved by the Government, the Contractor will be subject to action under the Default provision of this contract. However, prior to default action the Contractor will be permitted a period (at least 10 days) under that clause to submit additional descriptive literature on equipment originally offered or descriptive literature on other equipment.

The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional descriptive literature evaluations.

(b) The descriptive literature to be furnished by the contractor after award in accordance with paragraph

¹Available in any Veterans Administration station.

(a) of this section is subject to the controls established in § 8-74.113(b).

(c) The time of delivery or performance to be specified in the solicitation (see FPR 1-1.316) will include the time required for submission, receipt, the evaluation and approval required by § 8-74.113(b) of this chapter, and return to the contractor of the descriptive literature.

[34 FR 15753, Oct. 11, 1969, as amended at 40 FR 48349, Oct. 15, 1975]

§ 8-7.150-21 Purchase of shell fish.

Invitations for bids or requests for proposals covering oysters, clams or mussels, fresh or frozen, will contain the following clause:

The bidder certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shell fish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shell fish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

[31 FR 15312, Dec. 7, 1966]

§ 8-7.150-22 Services provided eligible beneficiaries.

The following clause will be included in all contracts covering services provided to eligible beneficiaries:

NONDISCRIMINATION IN SERVICES PROVIDED BENEFICIARIES

The contractor agrees to provide all services specified in this contract for any person determined eligible by the Chief Medical Director, or designee, regardless of the race, color, religion, sex, or national origin of the person for whom such services are ordered. The contractor further warrants that he/she will not resort to subcontracting as a means of circumventing this provision.

[40 FR 48349, Oct. 15, 1975]

§ 8-7.150-23 Noncompliance with packaging, packing, and/or marking requirements.

The following clause will be included in contracts for supplies for delivery to supply distribution warehouses or depots for storage and subsequent issue to a using activity. It may also be included when appropriate when delivery is direct to a using activity.

NONCOMPLIANCE WITH PACKAGING, PACKING, AND/OR MARKING REQUIREMENTS

Failure to comply with the packaging, packing, and marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement, or repackaging, repacking, and/or marking. The Government reserves the right without obtaining authority from the Contractor to perform the required repackaging, repacking, and/or marking services and charge the Contractor therefor at a rate of \$16 per man-hour for the first or fractional hour and \$10 for any succeeding or fractional hour, or have the required repackaging, repacking, and/or marking services performed commercially under Government orders and charge the Contractor therefor at the above rates. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking, and/or marking services.

[38 FR 5476, Mar. 1, 1973, as amended at 45 FR 15930, Mar. 12, 1980]

§ 8-7.150-24 Requirements for operating and maintenance manuals.

(a) Solicitations and requests for proposals for technical medical equipment and devices issued by a field station will normally require the contractor to provide operating and maintenance manuals. Unless the station Chief, Engineering Service, indicates that such service manuals are not needed, each invitation for bid or request for proposal for technical medical equipment will include VA Specification No. X-1711, Documentation, Technical Service, for Technical Medical Equipment and Devices, as a requirement. The number of such manuals required will be specified in both the solicitation and the resulting purchase order.

(b) Solicitations and requests for proposals for mechanical equipment (other than technical medical equip-

ment and devices) issued by a field station will include the following clause:

Service data manual. The contractor agrees to furnish two copies of a manual, handbook or brochure containing operating, installation, and maintenance instructions (including pictures or illustrations, schematics, and complete repair/test guides as necessary). Where applicable, it will include electrical data and connection diagrams for all utilities. The instructions shall also contain a complete list of all replaceable parts showing part number, name, and quantity required.

(c) When the bid or proposal will result in the initial purchase (including each make and model) of a centrally procured item, the following clause will be used:

Service data manual. The contractor agrees, when requested by the contracting officer, to furnish not more than five copies of the technical documentation required by VA Specification X-1711 to the Service and Reclamation Division, VA Supply Depot, Hines, Ill. In addition, the contractor agrees to furnish two copies of the technical documentation required by VA Specification X-1711 with each piece of equipment sold as a result of the invitation for bid or request for proposal.

[43 FR 22032, May 23, 1978]

§ 8-7.150-25 Guarantee clause.

(a) When the bid or proposal will result in any purchase, the following clause will be used:

Guarantee. The contractor guarantees the equipment against defective material, workmanship and performance for a period of ———, ¹said guarantee to run from date of acceptance of the equipment by the Government.

The contractor agrees to furnish, without cost to the Government, replacement of all parts and material which are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the purchasing officer if installation is outside of the continental United States. Cost of in-

stallation of replacement material and parts shall be borne by the contractor.²

(b) Where it is industry policy to furnish, but not install, replacement material and parts at the contractor's expense, the last sentence will be changed to indicate that cost of installation shall be borne by the Government. Where it is industry policy to (1) guarantee components for the life of the equipment (i.e., crystals in transmitters and receivers in radio communications systems) or (2) require that highly technical equipment be returned to the factory (at contractor's or Government's expense) for replacement of defective materials or parts, the clause used will be compatible with such policy.

[43 22032, May 23, 1978]

Subpart 8-7.6—Fixed-Price Construction Contracts

§ 8-7.600 Scope of subpart.

(a) This subpart sets forth contract clauses for use in fixed-price construction contracts, in addition to, or in lieu of those in FPR 1-7.6.

(b) Additional clauses not inconsistent with those in FPR 1-7.6 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer.

(c) Clauses inconsistent with those contained in FPR 1-7.6 and this subpart, but considered essential to the procurement of Veterans Administration requirements, shall not be used unless the deviation procedure set forth in § 8-1.109-2 has been complied with.

(d) As prescribed forms may not be altered, except when specifically authorized, clauses used under the provisions of paragraphs (a), (b), and (c) of this section will be included either in the schedule or continuation sheets or in supplementary general provisions.

[28 FR 2339, Mar. 12, 1963, as amended at 43 FR 22033, May 23, 1978]

¹Normally, insert 1 year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.

²The above clause will be modified to conform to standards of the industry involved.

§ 8-7.650 Clauses for fixed-price construction contracts estimated to exceed \$10,000.

[28 FR 2339, Mar. 12, 1963]

§ 8-7.650-1 Bond premium adjustment.

Insert clause set forth in § 8-10.5002.

[28 FR 2339, Mar. 12, 1963]

§ 8-7.650-2 Specifications and drawings.

Clause 2 of the general provisions (Construction Contract) SF 23A is supplemented as follows:

(a) The Contracting Officer's interpretation of the drawings and specifications will be final, subject to the disputes clause.

(b) Large scale drawings supersede small scale drawings.

(c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.

(d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work, shall be verified by the Contractor by actual measurement of the existing work. Any work, at variance with that specified or shown in the drawings shall not be performed by the Contractor until approved in writing by the Contracting Officer.

[38 FR 5477, Mar. 1, 1973]

§ 8-7.650-3 Work to be executed by contractor's forces.

(a) The contractor shall execute on the site, with his/her forces (exclusive of executive, supervisory and clerical forces), actual contract construction work equivalent to not less than³ — percent of the contract award price.

(b) Construction work shall consist of contract work accomplished on the site by laborers, mechanics, and foremen/forewomen on the Contractor's payroll and under his/her direct supervision. Cost of material and equipment installed by such labor may be included in the above percent of work required to be performed by the Contractor.

(c) The Contractor shall submit, simultaneously with schedule of costs required by Payment to Contractor provision of the General Conditions of these specifications,

³The Contracting Officer shall insert one of the following: Thirty percent for boiler replacements and piping, new or replacement elevators, emergency generators and wiring, water tanks and towers; 20 percent for water tanks where piping alterations are required and for new buildings with reinforced concrete frames; all other types of construction, 15 percent.

a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining value of a branch or branches, or portions thereof, of the work for the purpose of this article.

(d) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the Contracting Officer determines it to be in the best interests of the Government, the Contracting Officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(e) In the event the contractor fails or refuses to meet the requirement of paragraph (a) of his section, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement which is accomplished by others. For the purposes of this provision, it is agreed that 15 percent is an acceptable estimate of the Contractor's overhead and profit, or mark-up, on that portion of the work which the Contractor fails or refuses to perform, with his/her own forces, in accordance with paragraph (a) of this section.

[43 FR 22033, May 23, 1978]

§ 8-7.650-4 Bonds.

The contractor must furnish a Performance Bond (Standard Form 25) for one-hundred (100) percent of the amount of the contract, and a Payment Bond (Standard Form 25A) in the penal sums set forth below:

Amount of contract	Penal sum of bond
\$2,000 to \$1,000,000.	Fifty (50) percent of the amount of the contract.
\$1,000,000 to \$5,000,000.	Forty (40) percent of the amount of the contract.
\$5,000,000 and over ..	\$2,500,000.

[38 FR 5477, Mar. 1, 1973]

§ 8-7.650-5 Inspection and acceptance.

Clause 10, General Provisions, SF 23A is supplemented as follows:

(a) Inspection of materials and articles furnished under this contract will be made at the site by the Resident Engineer, unless otherwise provided for in the specifications. Samples, when required, must be submitted for approval as hereinafter noted.

(b) Final inspection and acceptance of the work shown by the drawings and specifications forming a part of this contract, shall not be binding or conclusive on the United States if it shall be shown that (1) the Contractor has willfully or through collusion with persons or firms engaged in the performance of the contract, or with an employee of the Federal Government, supplied inferior materials, equipment, or workmanship, or (2) the Contractor has otherwise departed from the terms of the contract.

(c) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The Contractor shall notify the Contracting Officer, through the Resident Engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection. Should it develop that the work installed does not justify such inspection at that time, or that the character of material or workmanship is such that reinspection is found necessary, the cost of such reinspection including salary of the inspector(s), his/her traveling and other expenses, shall be borne by the Contractor and will be deducted from any money due him/her on the applicable contract.

[29 FR 9829, July 22, 1964, as amended at 32 FR 7268, May 16, 1967; 43 FR 22033, May 23, 1978]

§ 8-7.650-6 Guaranty.

GUARANTY

(a) Unless otherwise specifically provided for in the contract or specifications, the Contractor, notwithstanding any final inspection, acceptance or payment, guarantees that all work performed and materials and equipment furnished under this contract are in accordance with the contract requirements. He also guarantees that when installed all materials and equipment were free from defects and will remain so for a period of at least 1 year from the date of acceptance by the Government.

(b) If defects of any kind should develop during the period such guaranties are in force, the Contracting Officer shall immediately notify the Contractor in writing of such defects. The Government thereupon shall have the right, by a written notice to that effect, to require the Contractor to repair or replace all inferior or defective work, material, or equipment or permit it to remain in place and assess the Contractor the costs he/she (the Contractor) would have incurred had he/she been required to effect repair or replace.

(c) Any correction or replacement of parts, materials, equipment, supplies or construction made pursuant to the provisions of this clause shall also be subject to the provisions of this clause to the same extent as parts, materials, equipment, supplies or

construction originally installed. The warranty with respect to such new or corrected parts, materials, equipment, supplies or construction shall be equal in duration as that set forth in (a) above and shall run from the date that such parts, materials, equipment, supplies or construction are replaced or corrected and accepted by the Government.

(d) The Contractor guarantees to reimburse the Government for, or to repair or replace, any damages to the site, buildings, or contents thereof that is caused by inferior or defective workmanship, or the use of inferior or defective materials or equipment in the performance of this contract. The Contracting Officer shall immediately notify the Contractor in writing when such damage occurs. The Government shall have the right to require the Contractor to repair or replace such damaged areas or equipment, or elect to permit such damage to remain as is and assess the Contractor the costs he/she would have incurred had he/she been required to effect repair or replacement.

(e) Should the Contractor fail to proceed promptly, after notification by the Contracting Officer, to repair or replace any inferior or defective work, material, or equipment, or damage to the site, buildings, or contents thereof, caused by inferior or defective work, or the use of inferior or defective materials, or equipment, the Government may have such work, material, equipment, or damage repaired or replaced and charge all costs incident thereto to the Contractor.

(f) Any special guaranties that may be required under the contract, shall be subject to the elections set forth above unless otherwise provided in such special guaranties.

(g) The decision of the Contracting Officer as to liability of the Contractor under this clause is subject to the appeal procedures provided for in the "Disputes Clause of this Contract."

[43 FR 22033, May 23, 1978]

§ 8-7.650-7 Correspondence.

All correspondence relative to this contract shall bear Specification Number, Project Number, Veterans Administration Contract Number, title of project and name of station.

[29 FR 9830, July 22, 1964]

§ 8-7.650-8 Reference to "Standards".

(a) Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions

of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in specifications.

(b) Federal Specification numbers refer to specifications issued by General Services Administration. Such specifications may be seen at the Office of Construction, Veterans Administration, Washington, D.C., or at the office of the Resident Engineer for this project. An Index to the Specifications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Single copies of specifications may be obtained without charge for bidding purposes, from any GSA Business Service Center provided a copy of the Invitation for Bids is furnished. Multiple copies may be purchased only from GSA Specifications Branch, Building 197, Washington Navy Yard, Washington, D.C. 20407.

[43 FR 22033, May 23, 1978]

§ 8-7.650-9 Government supervision.

(a) The work will be under the direction of the Veterans Administration Contracting Officer, who may designate another VA employee to act as Resident Engineer at the construction site.

(b) Except as provided below, the Resident Engineer's directions will not conflict with or change contract requirements.

(c) Within the limits of any specific authority delegated by the Contracting Officer, the Resident Engineer may by written direction make changes in the work. The Contractor shall be advised of the extent of such authority.

[29 FR 9830, July 22, 1964, as amended at 43 FR 22034, May 23, 1978]

§ 8-7.650-10 Daily report of workers and material.

The Contractor shall furnish to the Resident Engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/fore-

women and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work which they perform such as concrete, plastering, masonry, plumbing, sheet metal work, etc. Report shall give breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

[43 FR 22034, May 23, 1978]

§ 8-7.650-12 Subcontracts and work coordination.

The following clause is for use except as provided in § 8-7.650-13.

SUBCONTRACTS AND WORK COORDINATION

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the Contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the Contractor and subcontractors or between subcontractors.

(d) The Government reserves the right to refuse to permit employment on the work or require dismissal from the work of any subcontractor who, by reason of previous unsatisfactory work on Veterans Administration projects or for any other reason, is considered by the Contracting Officer to be incompetent or otherwise objectionable.

[38 FR 5477, Mar. 1, 1973, as amended at 43 FR 22034, May 23, 1978]

§ 8-7.650-13 Work coordination (alternate provision).

For new construction work with complex mechanical-electrical work, the following provision relating to work coordination may be substituted for paragraph (b) of the clause set forth in § 8-7.650-12:

The Contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and

their employees. The Contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The Contractor shall, in advance or the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than $\frac{1}{8}$ -inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproductions) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades which will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the Contractor's planned method of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the Contractor and to the Government. In the event the Contractor, in coordinating the various installations and in planning the method of installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the Contracting Officer immediately. In doing so, the Contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings until the conflicts have been corrected to the satisfaction of the Contracting Officer. It is the responsibility of the Contractor to submit the re-

quired drawings in a timely manner consistent with the requirement to complete the work covered by this contract within the prescribed contract time.

[43 FR 22034, May 23, 1978]

§ 8-7.650-14 Payments to contractors.

(a) For contracts that do not contain a section entitled "Network Analysis System (NAS), Clause 7, General Provisions, SF 23A," will be implemented as follows:

PAYMENTS TO CONTRACTORS

Clause 7, General Provisions, SF 23A, is implemented as follows:

(a) The contractor shall submit a schedule of cost to the contracting officer for approval. Such schedule will be signed and submitted in quadruplicate. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed. This schedule shall show cost by the branches of work for each building or unit of the contract, as instructed by the resident engineer.

(1) The branches shall be subdivided into as many subbranches as are necessary to cover all component parts of the contract work.

(2) Costs as shown by this schedule must be true costs and, should the resident engineer so desire he/she may require the contractor to submit the original estimate sheets or other information to substantiate detail makeup of schedule.

(3) The sum of subbranches, as applied to each branch, shall equal the total cost of such branch. The total costs of all branches shall equal the contract price.

(4) Bonds, insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed below. The percentages listed below are proportions of the cost listed in contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

System	Value of adjusting, correcting, and testing system (percent)
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5

System	Value of adjusting, correcting, and testing system (percent)
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system specified under 600 sections	5
Entire boiler plant system specified under 700 sections	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(b) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(c) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) The contractor furnishes satisfactory evidence of possession of title to such material and/or equipment and that it will be utilized on the work covered by the contract.

(3) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(4) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(5) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(6) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(7) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(d) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(e) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(f) [Revoked]

(b) For contracts that contain a section entitled "Network Analysis System (NAS), Clause 7, General Provisions, SF 23A," will be implemented as follows:

PAYMENTS TO CONTRACTORS

Clause 7, General Provisions, SF 23A, is implemented as follows:

(a) The contractor shall submit a schedule of costs in accordance with requirements of section NAS (network analysis system) to the contracting officer for approval. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

(1) Costs as shown on this schedule must be true costs and should the resident engineer so desire, he/she may require the contractor to submit his/her original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.

(2) The total costs of all activities shall equal the contract price.

(3) Bonds, insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.

(4) The CPM network shall include a separate cost loaded activity for adjusting and testing of the systems listed below. The percentages listed below will be used to determine the cost of adjust and test activities and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.

(5) Payment for adjust and test activities will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

System	Value of adjusting, correcting, and testing system (percent)
Pneumatic tube system	10
Incinerators (medical waste and trash)	5
Sewage treatment plant equipment	5
Water treatment plant equipment	5
Washers (dish, cage, glass, etc.)	5
Sterilizing equipment	5
Water distilling equipment	5
Prefab temperature rooms (cold, constant temperature)	5
Entire air-conditioning system specified under 600 sections	5
Entire boiler plant system specified under 700 sections	5
General supply conveyors	10
Food service conveyors	10
Pneumatic soiled linen and trash system	10
Elevators and dumbwaiters	10
Materials transport system	10
Engine-generator system	5
Primary switchgear	5
Secondary switchgear	5
Fire alarm system	5
Nurse call system	5
Intercom system	5
Radio system	5
TV (entertainment) system	5

(b) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(c) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) The contractor furnishes satisfactory evidence of possession of title to such material and/or equipment and that it will be utilized on the work covered by the contract.

(3) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(4) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(5) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(6) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(7) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(d) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(e) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(f) [Revoked]

[38 FR 15616, June 14, 1973, as amended at 41 FR 48517, Nov. 4, 1976; 43 FR 22034, May 23, 1978; 45 FR 14045, Mar. 4, 1980]

§ 8-7.650-15 Schedule of work progress.

(a) The Contractor shall submit with the schedule of costs, as required by "Payment to Contractor" clause a progress curve indicating anticipated work progression against lapsed contract time, for approval of the Contracting Officer. Submission shall be in quadruplicate on VA Form 08-6159, Construction Progress Chart, furnished by the Veterans Administration, and shall be signed by the Contractor. The curve shall start on the date the Contractor receives the "Notice to Proceed" and terminate on the original contract completion date. Both dates shall be indicated on the Construction Progress Chart.

(b) The scheduled percent completion will be compared to the actual percent completion to determine if the contract work is on schedule. Monthly progress reports will be prepared by the Veterans Administration on a Contract Progress Report form (VA Form 08-6001 or 08-6001a, as appropriate). This report will indicate both scheduled percent completion and actual percent completion. The scheduled percent completion will be taken from the approved progress curve. The

actual percent completion will be based on the value of work in place divided by current contract amount.

(c) The progress curve will be revised when additional time is granted for any reason. The curve will be revised only for individual or cumulative time extensions of 15 days or more. Either of the following methods of revising the curve will be used, depending on circumstances.

(1) Where there is additional time granted for reasons which do not immediately affect the job progress, such as changed work, use the following method: The curve is replotted between two points, starting with the point on the original or current curve established by the date when the change was ordered. The second point is the extended contract completion date resulting from the change.

(2) Where there is additional time granted for reasons which immediately affect the job progress, use the following method: The curve is replotted by means of a horizontal displacement to the original or current curve. The point on the original or current curve established by the date when the change was ordered or when job progress was affected is determined. The number of days granted is plotted horizontally from this point to establish the displacement. The remainder of the curve is replotted to the extended contract completion date.

(d) The revised curve will be used for reporting future scheduled percent completion.

[38 FR 5477, Mar. 1, 1973]

§ 8-7.650-16 Supplementary labor standards provisions.

(a) The wage determination decision of the Secretary of Labor is set forth in section GR, General Requirements, of this contract. It is the result of a study of wage conditions in the locality and establishes the minimum hourly rates of wages and fringe benefits for the described classes of labor in accordance with applicable law. No increase in the contract price will be allowed or authorized because of payment of wage rates in excess of those listed.

(b) The contractor shall submit the required copies of payrolls to the con-

tracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH-347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH-347, and in addition be accompanied by Department of Labor Form WH-348, Statement of Compliance, or any other form containing the exact wording of this form.

[38 FR 5478, Mar. 1, 1973, as amended at 41 FR 48518, Nov. 4, 1976]

§ 8-7.650-19 Workmen's compensation laws.

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several states to apply their workmen's compensation laws to all lands and premises owned or held by the United States.

[29 FR 9831, July 22, 1964]

§ 8-7.650-20 Safety requirements.

(a) In order to protect the lives and health of employees and others, the contractor shall take such safety precautions as are required by insurance underwriters, and shall comply with all applicable provisions of "Safety and Health Regulations for Construction" as set out in Title 29-Labor, Code of Federal Regulations.

(b) The contractor shall maintain an accurate record of, and shall report to the contracting officer through the resident engineer in the manner and on forms prescribed by the contracting officer, all cases of death, occupational disease, and traumatic injury arising out of, or in course of, performance of this contract.

(c) The responsibility for compliance with the "Safety and Health Regulations for Construction," set out in Title 29-Labor, Code of Federal Regulations, is placed on the contractor; consequently, prime contractors or subcontractors, or both, are responsible for compliance with these regulations. Insofar as the Government is concerned, the responsibility for the administration and enforcement of Title 29-Labor, Code of Federal Regulations, in the private sector, is with the U.S. Department of Labor.

(d) Work stoppage(s) issued because of the contractor's failure to comply with the "Safety and Health Regulations for Construction," set out in Title 29—Labor, Code of Federal Regulations, shall not be the basis of a claim for time lost or for any delays directly or indirectly attributable to such failure.

(e) The resident engineer on all assigned construction projects is designated as the VA Safety Officer, and as such is responsible for enforcing all safety regulations as they apply to the safety of Veterans Administration employees, visitors, and patients. Regular safety inspections are conducted by the resident engineer weekly, and all noted violations of safety and health regulations will be brought to the attention of the contractor who will take immediate action to correct such violations. If corrective action is not taken promptly, a copy of the resident engineer's report will be forwarded to the Department of Labor. These inspections in no way relieve the contractor from full compliance with the responsibilities outlined in paragraph (c) of this clause.

(f) "Safety and Health Regulations for Construction," mentioned in paragraph (a) of this clause may be obtained from any regional office of the Occupational Safety and Health Administration, Department of Labor.

[41 FR 48518, Nov. 4, 1976]

§ 8-7.650-21 Contract changes.

Clause 3, Changes, and Clause 4, Differing Site Conditions, of General Provisions, SF 23A, are supplemented as follows:

(a) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted within 30 calendar days after receipt of request, shall be in legible form, original and five copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. No itemized breakdown will be required for proposals amounting to less than \$100.

(b) When the necessity to proceed with a change does not allow sufficient time to check a proposal or because of failure to reach an agreement, the contracting officer may order the contractor to proceed (proceed order) on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, if a proceed order is

issued the contractor shall submit a proposal for changes in work within 30 calendar days.

(c) If the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached, the contracting officer will consider issuing a unilateral change order.

(d) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor material, and use of construction equipment required to accomplish the change. As the value of the change increases, a declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on first \$20,000; 7½ percent overhead and 7½ percent profit on next \$30,000; 5 percent overhead and 5 percent profit on balance over \$50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(e) The Prime Contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the Prime Contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on first \$20,000; 7½ percent fee on next \$30,000; and 5 percent fee on balance over \$50,000.

(f) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

(g) Where the contractor or subcontractor's portion of a change involves credit items, such items must be deducted prior to adding overhead and profit for the party performing the work. Where a change involves credit items only, such items will be net, i.e., overhead, profit, and fee are excluded. The contractor's fee is limited to the net increase to contractor of subcontractor's portions cost computed in accordance herewith.

(h) Cost of Federal Old Age Benefit (Social Security) tax and of Workmen's Compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, Prime Contractor's fee will be allowed on such items in subcontractor's proposals.

(i) Overhead and Contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, watchmen, use of small tools, incidental job burdens, and general home office expenses, and no separate allowance will be made therefor.

(j) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

[34 FR 15470, Oct. 4, 1969, as amended at 38 FR 5478, Mar. 1, 1973; 39 FR 13263, Apr. 12, 1974; 41 FR 48519, Nov. 4, 1976; 45 FR 15930, Mar. 12, 1980]

§ 8-7.650-22 Removal of debris and final cleanup.

Upon completion of the work, the contractor shall leave the premises in a neat and clean condition and do all cleaning and washing required by the several technical sections of the specifications satisfactory to the Contracting Officer.

[29 FR 9831, July 22, 1964]

§ 8-7.651 Clauses for fixed price construction contracts estimated to exceed \$2,000 but not to exceed \$10,000.

§ 8-7.651-1 Bond premium adjustment.

Insert the clause set forth in § 8-10.5002.

[28 FR 2342, Mar. 12, 1963]

§ 8-7.651-2 Rights reserved.

Rights Reserved

(a) The Government reserves the following rights: To refuse to permit employment on the work or require dismissal from the work any of the Contractor's employees or agents or Subcontractors, who, by reason of previous unsatisfactory work on VA projects, or for any other reason, are considered by the Contracting Officer to be incompetent or otherwise objectionable:

(b) To withhold payment until samples, shop drawings, certificates, or such other things as are required by this contract have been properly submitted to the satisfaction of the Contracting Officer.

[28 FR 2342, Mar. 12, 1963]

§ 8-7.651-3 Inspection and acceptance.

Insert the clause set forth in § 8-7.650-5, beginning with paragraph (a).

[34 FR 15471, Oct. 4, 1969]

§ 8-7.651-4 Reference to "Standards."

Insert the clause set forth in § 8-7.650-8. Modification of paragraph (b) of the clause is authorized to identify the office issuing the solicitation and at which specifications may be seen.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.651-5 Workmen's compensation laws.

Insert the clause set forth in § 8-7.650-19.

[28 FR 2342, Mar. 12, 1963]

§ 8-7.651-6 Safety requirements.

Insert the clause set forth in § 8-7.650-20.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.651-7 Contract changes.

Contract Changes

Clause 1, Changes and Changed Conditions, General Provisions, p. 2 SF 19 is supplemented as follows: (Insert the clause in § 8-7.650-21 beginning with paragraph (a).)

[28 FR 2342, Mar. 12, 1963]

§ 8-7.651-8 Payrolls and basic records.

Insert the clause set forth in § 8-7.650-16.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.651-9 Government supervision.

Insert the clause set forth in § 8-7.650-9.

[32 FR 7269, May 16, 1967]

§ 8-7.651-10 Guaranty.

Whenever it is determined that a requirement for a guaranty is in the best interest of the Government, insert the following clause:

GUARANTY

Unless otherwise provided in the contract or specifications, the Contractor guarantees all work performed and materials and equipment furnished under this contract for a period of 1 year from the date of acceptance by the Government. If defects of any kind develop during the guarantee period, the Contractor agrees to repair or replace all defective work, materials and equipment and to repair or replace any damages to the site, buildings or contents caused by inferior or defective workmanship or materials or equipment. Should the Contractor fail to proceed promptly, after notification by the Contracting Officer, to effect such repairs or replacement, the Government may have such work, materials, equipment or damage repaired or replaced and charge all costs incident thereto to the Contractor.

[34 FR 15471, Oct. 4, 1969]

§ 8-7.651-11 Protection of property.

The contractor shall protect all utility lines, adjacent buildings, trees, shrubs, roads, curbs, walks and other property from damage while the work called for in this contract is in progress. He shall protect all existing or completed work from damage due to inclement weather, dust, dirt, etc. He shall repair or replace any damage thereto caused by himself, his workmen, his subcontractors or their workmen while this work is in progress.

[35 FR 11473, July 17, 1970]

§ 8-7.651-12 Bonds.

Insert the clause set forth in § 8-7.650-4.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.652 Clauses for fixed price construction contracts estimated not to exceed \$2,000.

[28 FR 2342, Mar. 12, 1963]

§ 8-7.652-1 Rights reserved.

Insert the clause set forth in § 8-7.651-2.

[28 FR 2342, Mar. 12, 1963]

§ 8-7.652-2 Reference to "Standards."

Insert the clause set forth in § 8-7.650-8. Modification of paragraph (b) of the clause is authorized to identify the office issuing the solicitation and at which specifications may be seen.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.652-3 Workmen's compensation laws.

Insert the clause set forth in § 8-7.650-19.

[28 FR 2342, Mar. 12, 1963]

§ 8-7.652-4 Safety requirements.

Insert the clause set forth in § 8-7.650-20.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.652-5 Protection of property.

Insert the clause set forth in § 8-7.651-11.

[39 FR 13263, Apr. 12, 1974]

Subpart 8-7.51—Cost Reimbursement Type Contracts for Education and Rehabilitation

SOURCE: 30 FR 7600, June 11, 1965, unless otherwise noted.

§ 8-7.5100 Scope of subpart.

(a) This subpart sets forth contract clauses for use in cost reimbursement type contracts relating to education and rehabilitation.

(b) Additional clauses not inconsistent with those listed in this subpart are authorized when determined necessary or desirable by the Contracting Officer.

(c) A prescribed form may not be altered except when specifically authorized. Clauses used under the provision of paragraph (b) of this section will be included either in the schedule or continuation sheets or in supplementary general provisions.

(d) Clauses inconsistent with those listed in this subpart, but considered essential to the procurements of training and education may be used as provided in the deviation procedure set forth in § 8-1.109.

[30 FR 7600, June 11, 1965, as amended at 39 FR 13263, Apr. 12, 1974]

§ 8-7.5101 Clauses to be used when applicable.

The clauses contained in this section will be included in contracts relating to education and rehabilitation under the conditions set forth in connection with each clause.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.5101-1 Assignment of claims.

Insert the clause set forth in FPR 1-30.703 under the conditions contained therein.

§ 8-7.5101-2 Default.

Insert the clause set forth in FPR 1-8.707.

§ 8-7.5101-3 Disputes.

Insert the clause set forth in FPR 1-7.102-12.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.5101-4

Title 41—Public Contracts, Property Management

§ 8-7.5101-4 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in FPR 1-7.103-4 if the contract is expected to exceed \$10,000.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.5101-5 Buy American Act.

Insert the clause set forth in FPR 1-6.104-5 under the conditions contained therein.

§ 8-7.5101-6 Convict labor.

Insert the clause set forth in FPR 1-12.203 under the conditions contained in FPR 1-12.202.

§ 8-7.5101-7 Contract Work Hours and Safety Standards Act—overtime compensation.

Insert the clause set forth in FPR 1-12.303 under the conditions contained in FPR 1-12.302.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.5101-8 Equal opportunity.

Insert the clause set forth in FPR 1-12.803-2 under the conditions contained in FPR 1-12.803-1.

§ 8-7.5101-9 Officials not to benefit.

Insert the clause set forth in FPR 1-7.102-17.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.5101-10 Inspection.

Insert the following clause in contracts entered into with educational institutions and training establishments for education and rehabilitation:

INSPECTION

The contractor will permit the duly authorized representative of the Veterans Administration to visit the place of instruction as may be necessary and examine the training facilities and work of the veterans in training under this contract.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.5101-11 Extension of contract period.

The following clause will be included in contracts where appropriate pertaining to services for education and rehabilitation:

EXTENSION OF CONTRACT PERIOD

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.5101-12 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1-7.103-3.

[39 FR 13263, Apr. 12, 1974]

§ 8-7.5101-13 Listing of employment openings.

Insert the clause set forth in FPR 1-12.1102-2.

[39 FR 13263, Apr. 12, 1974]

PART 8-8—TERMINATION OF CONTRACTS

Subpart 8-8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price and Cost-Reimbursement Type Contracts

Sec.

8-8.200 Scope of subpart.

8-8.206 Fraud or other criminal conduct.

8-8.207 Accounting review of prime contract settlement proposals and of sub-contract settlements.

8-8.211 Review and approval of proposed settlements.

8-8.211-1 Settlement review boards.

8-8.211-2 Required review and approval.

Subpart 8-8.6—Termination for Default

8-8.602-6 Repurchase against contractor's account.

Subpart 8-8.7—Clauses

8-8.700 Scope and applicability of subpart.

8-8.700-1 Scope.

8-8.700-2 Applicability.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

**Subpart 8-8.2—General Principles
Applicable to the Termination for
Convenience and Settlement of
Fixed-Price and Cost-Reimburse-
ment Type Contracts**

§ 8-8.200 Scope of subpart.

This subpart prescribes actions to be taken by contracting officers, when settlement proposals are received from contractors whose contracts have been terminated for the convenience of the Government.

[33 FR 14701, Oct. 2, 1968]

§ 8-8.206 Fraud or other criminal conduct.

When the circumstances set forth in FPR 1-8.206 are encountered, the contracting officer will immediately discontinue all negotiations. He/she will submit to the Assistant Administrator for Supply Services, all of the pertinent facts necessary to support his/her reasoning. The Assistant Administrator for Supply Services will review the submission and fully develop the facts. If he/she concurs that the evidence indicates fraud or other criminal conduct, he/she will forward the submission with his/her recommendations, through channels, to the General Counsel for a determination as to whether submission to the Department of Justice for criminal or civil action is indicated. The contracting officer will be advised by the Assistant Administrator for Supply Services as to any further action to be taken by him/her. Pending receipt of this advice, the matter will not be discussed with the contractor. If inquiry is made by the contractor, he/she will be advised only that his/her proposal has been forwarded to higher authority.

[46 FR 26643, May 14, 1981]

§ 8-8.207 Accounting review of prime contract settlement proposals and of sub-contract settlements.

Contracting officers will submit settlement proposals to the Assistant Inspector General for Audit (52C), for review and audit prior to taking any

further action, in accordance with the provisions and claim limitations applicable to prime and subcontractors as set forth in FPR 1-8.207.

[46 FR 26644, May 14, 1981]

§ 8-8.211 Review and approval of proposed settlements.

§ 8-8.211-1 Settlement review boards.

The Assistant Administrator for Supply Services and the Assistant Administrator for Construction will each establish within his/her own organization a settlement review board. These boards will be established in accordance with the provisions for FPR 1-8.211-1 for the purpose of reviewing proposed settlements of contracts that have been terminated for the convenience of the Veterans Administration.

[46 FR 26644, May 14, 1981]

§ 8-8.211-2 Required review and approval.

(a) When a review of a proposed settlement is required by FPR 1-8.211-2 and the contract covers supplies, equipment or services, other than construction chargeable to Construction Appropriations, the contracting officer will submit the proposed settlement or determination to the settlement review board through the Assistant Administrator for Supply Services (93).

(b) When the contract covers construction chargeable to Construction Appropriations and review is required, the proposed settlement or determination will be submitted by the contracting officer to the settlement review board through the Assistant Administrator for Construction.

(c) Each submission shall, in addition to the material required by FPR 1-8.211-2(c), be accompanied by any other relevant material that will assist the board in arriving at a decision to approve or disapprove the proposal.

[33 FR 14701, Oct. 2, 1968, as amended at 45 FR 7815, Feb. 5, 1980; 46 FR 26644, May 14, 1981]

Subpart 8-8.6—Termination for Default

§ 8-8.602-6 Repurchase against contractor's account.

(a) VA Form 07-2237, Request, Turn-in, and Receipt for Property or Services, or the file copy of the purchase order covering the purchase of supplies, equipment or services against a defaulting contractor shall be annotated to show the name of the defaulted contractor, the contract number, the contract price, the name of the contractor from whom procurement is made, the price paid, the competition secured and the difference in cost, if any, to the Veterans Administration. When repurchase results in the payment of excess costs, and the purchase is made through the Supply Fund, the excess costs when collected shall be deposited to the credit of the Supply Fund. In all other instances the excess costs, when collected, shall be deposited to General Fund Receipts.

(b) Contracting Officers, when purchasing against a defaulted contractor, shall procure the items in a manner that will protect the interests of the contractor as well as those of the Government.

[31 FR 7687, May 28, 1966]

Subpart 8-8.7—Clauses

SOURCE: 34 FR 6730, Apr. 22, 1969, unless otherwise noted.

§ 8-8.700 Scope and applicability of subpart.

§ 8-8.700-1 Scope.

This subpart prescribes the termination clauses to be used by the Veterans Administration in fixed-price and certain cost-reimbursement type contracts.

§ 8-8.700-2 Applicability.

(a) Formally advertised or negotiated fixed-price contracts for supplies and/or equipment will include the following clauses, as applicable:

(1) The long-form termination for convenience clause set forth in FPR 1-8.701 and the termination for default

clause set forth in FPR 1-8.707 will be included in contracts estimated to exceed \$100,000.

(2) The short-form termination for convenience clause set forth in FPR 1-8.705-1 and the termination for default clause set forth in FPR 1-8.707 will normally be included in contracts estimated to cost more than \$2,500 but not more than \$100,000. However, the long-form termination for convenience clause in FPR 1-8.701 may be used for contracts in this price range when the long-form clause is included in pre-printed supplemental conditions.

(b) Formally advertised or negotiated fixed-price contracts for nonpersonal services (excluding construction) estimated to exceed \$2,500 may include the short-form termination for convenience clause set forth in FPR 1-8.705-1, whenever it is determined that a termination for convenience clause is both advisable and desirable for use of the Government and a claim will not be made in the event of termination for the convenience of the Government. If these conditions do not exist, and it is the desire of both parties to have the right to terminate the contract, a mutual termination clause as provided in paragraph (i)(2) of this section may be included. In other cases a special termination clause, designed to meet the specific requirements of the contract, may be included as provided in paragraph (i)(1) of this section. Service contracts will normally include the termination for default clause set forth in FPR 1-8.707 (Article 11, Standard Form 32, General Provisions, Supply Contracts). However, when this clause is clearly not appropriate for the services being acquired, it may be eliminated, revised or replaced with a special or mutual termination clause as provided in paragraph (i) of this section.

(c) Formally advertised or negotiated fixed-price contracts for construction will include the following clauses, as applicable:

(1) The long-form termination for convenience clause set forth in FPR 1-8.703 and the long-form termination for default clause set forth in FPR 1-8.709-1 will be included in contracts estimated to exceed \$10,000.

(2) The short-form termination for default clause set forth in FPR 1-8.709-2 will be included in contracts not exceeding \$10,000. At the option of the contracting officer, the short-form termination for convenience clause set forth in FPR 1-8.705-2 may be included.

(d) Formally advertised or negotiated fixed-price contracts in excess of \$2,500 for experimental, developmental, or research work where a profit is contemplated will include the long-form termination for convenience clause set forth in FPR 1-8.701. However, if the contract is for services and it is determined that the successful bidder will not have incurred substantial charges in preparation for and carrying out the contract, the short-form termination for convenience clause set forth in FPR 1-8.705-1 may be used instead. When it is advisable to provide for termination for default, contracts of this type will also include the clause set forth in FPR 1-8.710.

(e) Fixed-price contracts for experimental, developmental or research work placed with an educational or nonprofit institution on a no-fee or no-profit basis will contain the termination for convenience clause set forth in FPR 1-8.704-1. A termination for default clause is not required.

(f) Cost-reimbursement type contracts for experimental, developmental, or research work placed with an educational or nonprofit institution on a no-fee or no-profit basis will include the termination for convenience clause set forth in FPR 1-8.704-1, whenever the contracting officer considers a termination clause is necessary or advisable. A termination for default clause is not required.

(g) Cost-reimbursement type contracts for (1) supplies and/or equipment or (2) experimental, developmental or research work where a fee is contemplated will include the termination for default or for convenience clause as set forth in FPR 1-8.702, whenever the contracting officer considers a termination clause is necessary or advisable. When this termination clause is used, an excusable delays clause substantially as set forth in FPR 1-8.708 will be included.

(h) Cost-reimbursement type construction contracts in excess of \$10,000 will include the termination for default or for convenience clause set forth in FPR 1-8.702, modified as provided in FPR 1-8.700-2(a)(3). Contracts of this type will also include the excusable delays clause substantially as set forth in FPR 1-8.708.

(i) Special or mutual termination clauses may be used in service contracts for which no clauses are prescribed in this subpart.

(1) When required or advisable, a special clause will be developed to meet the needs of the specific contract, such as procurement from a sole source for utility services, medical specialist services, medical resources, etc.

(2) When a mutual termination clause is appropriate, it will be substantially as follows:

This contract will remain in force during the period stated, unless terminated at the request of either party after thirty (30) days notice in writing. To the extent that this contract is so terminated, the Veterans Administration will be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

PART 8-10—BONDS AND INSURANCE

Subpart 8-10.1—Bonds

Sec.

8-10.103 Bid guarantees.

8-10.103-50 Safekeeping and return of bid guaranty.

8-10.104 Performance bonds.

Subpart 8-10.2—Sureties on Bonds

8-10.204-1 United States bonds or notes.

8-10.204-2 Certified or cashier's checks, bank drafts, money orders, currency, or irrevocable letters of credit.

Subpart 8-10.4—Insurance Under Fixed-Price Contracts

8-10.451 Insurance and indemnification requirements for ambulance service contracts.

Subpart 8-10.50—Performance and Payment Bonds

8-10.5002 Bond premium adjustment.

§ 8-10.103

Title 41—Public Contracts, Property Management

Subpart 8-10.51—Indemnification of Contractors, Medical Research or Development Contracts

Sec.

8-10.5100 Scope of subpart.

8-10.5101 General.

8-10.5102 Extent of indemnification.

8-10.5103 Financial protection.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c), unless otherwise noted.

Subpart 8-10.1—Bonds

SOURCE: 30 FR 4676, Apr. 10, 1965, unless otherwise noted.

§ 8-10.103 Bid guarantees.

§ 8-10.103-50 Safekeeping and return of bid guaranty.

(a) Certified checks or other negotiable security furnished as bid security with the three lowest acceptable bids will be retained in a safe. These will be returned by certified mail or in person upon presentation of proper receipt therefor after contract and bonds have been signed and approved.

(b) Certified checks or other negotiable security furnished in support of other than the three lowest acceptable bids should be returned promptly to the respective bidders by certified mail, or in person upon presentation of proper receipt therefor.

(c) Commercial bid bonds are not returned unless specifically requested by the bidders, and, even if requested by any of the three low bidders, are not returned until contract and bonds have been executed by the successful bidder, or all bids have been rejected.

§ 8-10.104 Performance bonds.

Subpart 8-10.2—Sureties on Bonds

SOURCE: 30 FR 4676, Apr. 10, 1965, unless otherwise noted.

§ 8-10.204-1 United States bonds or notes.

Contracting Officers, with the exception of those located in the District of Columbia, receiving United States bonds or notes in lieu of corporate or individual sureties will forward such bonds and notes to the agent cashier

for safekeeping. Contracting Officers in the District of Columbia will deposit such bonds and notes with the Treasurer of the United States.

§ 8-10.204-2 Certified or cashier's checks, bank drafts, money orders, currency, or irrevocable letters of credit.

Contracting Officers receiving a certified or cashier's check, bank draft, Post Office money order or currency in lieu of corporate or individual sureties will deposit them with the agent cashier.

Subpart 8-10.4—Insurance Under Fixed-Price Contracts

§ 8-10.451 Insurance and indemnification requirements for ambulance service contracts.

Term contracts, or contracts of a continuing nature, for ambulance service, will contain the following requirements, as applicable:

(a) *Indemnification.* The contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this agreement. Further, it is agreed that any negligence or alleged negligence of the Government, its officers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the contractor, and subject to the approval by the Contracting Officer of the sources, insurance coverage may be employed as guaranty of indemnification.

(b) *Insurance.* Satisfactory insurance coverage is a condition precedent to award of a contract. In general, a successful bidder must present satisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workman's compensation and employer's li-

ability coverage will conform to applicable State law requirements for the service contemplated, whereas general liability and automobile liability of comprehensive type, shall in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than \$100,000 per person and \$500,000 per accident, the corresponding property damage liability insurance coverage (comprehensive automobile liability policy) to be not less than \$10,000. State approved sources of insurance coverage ordinarily will be deemed acceptable to the Veterans Administration installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. (In those instances where airplane ambulance service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require passenger liability insurance of \$100,000 per passenger and \$500,000 per accident, an aircraft public liability insurance of \$100,000 per person and \$500,000 per accident, the corresponding property damage liability insurance coverage (comprehensive aircraft liability policy) to be not less than \$50,000 per accident).

(c) *Exceptions.* The provisions of this section do not apply to:

(1) Emergency or sporadic ambulance service authorized by VA Manual MP-1, part II, chapter 3: *Provided*, That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further*, That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

(2) Contracts for limousine or taxi service: *Provided*, That such limousines or taxis are used to transport ambulatory beneficiaries, and are not equipped for and used in lieu of ambulance service.

(d) *Contracts for limousine and taxi service.* Contracts for limousine and taxi service must contain provisions for insurance coverage in accordance with State or local requirements.

[31 FR 7688, May 28, 1966, as amended at 31 FR 16200, Dec. 17, 1966; 38 FR 10006, Apr. 23, 1973]

Subpart 8-10.50—Performance and Payment Bonds

§ 8-10.5002 Bond premium adjustment.

When Performance and Payment Bonds are required the contract will contain the following clause:

Bond Premium Adjustment

When net changes in original contract price affect the premium of a Corporate Surety Bond by \$5 or more, the Government in determining basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

[28 FR 2343, Mar. 12, 1963]

Subpart 8-10.51—Indemnification of Contractors, Medical Research or Development Contracts

SOURCE: 31 FR 7688, May 28, 1966, unless otherwise noted.

§ 8-10.5100 Scope of subpart.

(a) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts which involve a risk of an unusually hazardous nature, covering research or medical research or development as authorized by 38 U.S.C. 216 and 4101.

(b) The authority to indemnify the contractor under this subpart does not create any rights to third parties which would not otherwise exist by law.

(c) As used in this subpart the term "contractor" includes subcontractors of any tier under a contract in which an indemnification provision pursuant to 38 U.S.C. 216(b)(1) is contained.

§ 8-10.5101 General.

(a) The approval for the indemnification of contractors will be made by the Administrator of Veterans Affairs.

(b) Contracting officers shall submit requests for approval, together with all available information, to the Chief Medical Director (134) for transmittal to the Administrator.

§ 8-10.5102 Extent of indemnification.

(a) Any contract for research authorized by 38 U.S.C. 216 or medical

research or development by 38 U.S.C. 4101, the performance of which involves a risk of an unusually hazardous nature, may provide that the Government will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not covered by the financial protection required under § 8-10.5103.

(1) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal Workman's Compensation Acts to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with this subpart will also provide for:

(1) Notice to the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss or damage to property; and

(2) Control of or assistance in the defense by the Government, at its election of any suit or claim for which indemnification is provided in the contract.

§ 8-10.5103 Financial protection.

(a) The financial protection to cover liability to third persons and loss of or damage to the contractor's property which the contractor is required to have and maintain will normally be the maximum amount available from private sources; however, the Administrator may establish a lesser amount after taking into consideration the cost and terms of private insurance.

(b) The financial protection may include private insurance, private contractual indemnities, self-insurance other proof of financial responsibility or a combination of such forms to provide the maximum amount required. When the contractor elects to utilize self-insurance, proof of such financial

responsibility up to the maximum amount required will be furnished the contracting officer prior to award.

PART 8-11—FEDERAL, STATE, AND LOCAL TAXES

Sec.

8-11.000 Scope of part.

Subpart 8-11.2—Exemptions from Federal Excise Taxes

8-11.203 Supplies and services for the exclusive use of the United States.

8-11.250 Tax exempt tobacco products for State institutions.

8-11.250-1 General.

8-11.250-2 Institution responsibilities.

8-11.250-3 Institution ordering procedures.

8-11.250-4 Processing of order by Veterans Administration.

8-11.251 Tax exemptions for alcohol products.

Subpart 8-11.5—Tax Exemption Forms

8-11.501 Federal excise tax exemption forms.

8-11.502 State and local tax exemption forms.

8-11.502-1 [Reserved]

8-11.502-2 When evidence of exemption is to be furnished.

AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 390; 38 U.S.C. 210, 40 U.S.C. 486(c).

§ 8-11.000 Scope of part.

The problems presented in connection with the administration of tax aspects of a contract or transaction are widely varied. These problems are essentially legal; therefore, when questions arise, the Contracting Officer will request, through channels, legal advice from the General Counsel.

[30 FR 4676, Apr. 10, 1965]

Subpart 8-11.2—Exemptions from Federal Excise Taxes

§ 8-11.203 Supplies and services for the exclusive use of the United States.

The Veterans Administration is exempt from the Federal excise taxes imposed on tobacco and alcohol products when such items are purchased from factories and bonded warehouses by the Veterans Administration for use in its medical care program.

[45 FR 9266, Feb. 12, 1980]

Chapter 8—Veterans Administration

§ 8-11.251

§ 8-11.250 Tax exempt tobacco products for State institutions.

[45 FR 9266, Feb. 12, 1980]

§ 8-11.250-1 General.

Bureau of Alcohol, Tobacco, and Firearms regulations (27 CFR 295.31-37) permit the withdrawal of tax-free tobacco products by facilities and institutions owned or controlled by the Government of each of the several States, territories and the District of Columbia for gratuitous distribution to present and former members of the Armed Forces of the United States who are patients in such institutions. These arrangements will be effective only with institutions where the official-in-charge abides by the procedures and controls prescribed by the Veterans Administration. The unauthorized or illegal use of these products may result in the withdrawal of this privilege by the Veterans Administration.

[45 FR 9266, Feb. 12, 1980]

§ 8-11.250-2 Institution responsibilities.

(a) The official-in-charge of the institution will act as a representative of the Veterans Administration in the purchase, storage, and distribution of these products.

(b) The product must be distributed on a gratuitous and equitable basis to all eligible recipients. Under no circumstances will these items be offered for sale.

(c) The Veterans Administration will neither accept nor handle donations or funds for institutions.

(d) Payment or nonpayment of State taxes on tobacco products is a matter between the concerned State and the institution.

(e) Copies of all orders and other pertinent documents will be retained and be available to the Veterans Administration and the Bureau of Alcohol, Tobacco, and Firearms for inspection purposes.

[31 FR 16312, Dec. 21, 1966, as amended at 45 FR 9266, Feb. 12, 1980]

§ 8-11.250-3 Institution ordering procedures.

Orders will be on the institution's regular order form made out to the manufacturer of the desired product. The original and two copies of the order, all signed, will be forwarded to the nearest Veterans Administration medical center. Orders shall be issued as shown in this § 8-11.250-3 to cover receipt of unsolicited shipments of these products intended for use of veteran-patients. All copies of these orders will be marked CONFIRMATION—DO NOT RESHIP. All orders shall bear a certificate as follows:

Tobacco products for free distribution to present and former members of the Armed Forces of the United States who are hospitalized or domiciled in this institution.

[45 FR 9266, Feb. 12, 1980]

§ 8-11.250-4 Processing of order by Veterans Administration.

(a) The station head (or designee) will approve the order by signing the original and one copy in ink over his/her stamped or typed name and title. The approved original and copy shall be forwarded to the vendors, as noted in § 8-11.501. (The copy is for retention at the shipping factory for review by the Bureau of Alcohol, Tobacco, and Firearms.) The additional copy shall be retained in the medical center's files.

(b) Full cooperation will be given institution representatives in implementing these procedures.

[31 FR 16312, Dec. 21, 1966, as amended at 45 FR 9266, Feb. 12, 1980]

§ 8-11.251 Tax exemptions for alcohol products.

The withdrawal of spirits free of tax for nonbeverage purposes is permitted to Governmental agencies by regulations of the Bureau of Alcohol, Tobacco, and Firearms. (See 27 CFR 201.389-394, 211.231-237, 213.141-146, and 240.720-722.) The use of tax-free alcohol, whiskey, beer, wine, and denatured spirits for nonbeverage purposes shall include but not be limited to medicinal, mechanical, and scientific purposes and in the treatment of patients.

Provisions for tax-free procurement are provided in § 8-1.501.

[45 FR 9266, Feb. 12, 1980]

Subpart 8-11.5—Tax Exemption Forms

§ 8-11.501 Federal excise tax exemption forms.

(a) *Tobacco products.* No tax exemption form or certificate is required for the tax-free purchase of tobacco products. An extra copy of the purchase order will be provided the manufacturer to facilitate recordkeeping.

(b) *Whiskey, alcohol, specially denatured alcohol.* Authority is hereby delegated to the Chief, Marketing Division for Drugs and Chemicals, Veterans Administration Marketing Center, Hines, Ill., and to the Chiefs, Supply Service, Veterans Administration medical facilities, to sign applications for permits on Bureau of Alcohol, Tobacco, and Firearms prescribed forms. This authority is not to be redelegated. Application forms will be obtained from and submitted to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C. 20226. ATF Form 1486, Specially Denatured Spirits for Use of United States, is the application/permit required for specially denatured spirits, and AFT Form 1444, Tax-Free Spirits for Use of United States, is required for distilled spirits (whiskey and alcohol). These are continuing permits to procure items tax free and they must be made available to the supplier in support of each procurement. Purchases for excise tax-free whiskey and alcohol, not available through the depots, can only be made from a distillery or a bonded premises. In accordance with 27 CFR 213.144, the vendor will also support each shipment with AFT 1473, Shipment and Receipt Specially Denatured Tax-Free, or Recovered Spirits. The ATF 1473 will be completed by the accountable officer and the original copy will be forwarded to the Regional Regulatory Administrator whose address is shown in item 12 of the form. A copy of ATF 1473 will be retained in the purchase order file.

(c) *Beer procured from licensed breweries.* The contracting officers

specified in paragraph (b) of this section are hereby authorized to sign application permits to procure from licensed breweries, alcohol (beer) tax free, when such product is prescribed for therapeutic use of patients. The applications, in letter form, shall be submitted to the Director, Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C. 20226 and contain the following information:

- (1) Name and address of facility.
- (2) Specific purpose for which it will be used.
- (3) Quantity proposed to buy each month, year, etc.
- (4) Name and address of the brewery.
- (5) Copy of document authorizing contracting officer to sign request.

A new permit is needed only when beer is to be purchased from a different brewery than the one for which the original permit was requested.

(d) *Wine.* No tax exemption form or ATF permit is required for the tax-free procurement of wine. An extra copy of a properly executed purchase order or requisition document may be furnished to the supplier to facilitate record keeping.

[45 FR 9266, Feb. 12, 1980]

§ 8-11.502 State and local tax exemption forms.

§ 8-11.502-1 [Reserved]

§ 8-11.502-2 When evidence of exemption is to be furnished.

(a) SF 1094, U.S. Government Tax Exemption Certificate, will be furnished the vendor to claim exemption from payment of State and local taxes when the purchase price excludes such taxes. This form will be used by the U.S. Government as the basis for billing taxing authorities for refund of taxes paid, when the vendor refuses to sell at a price exclusive of such taxes.

(b) SF 1094 will not be furnished the vendor or used by the United States Government to claim reimbursement from the taxing authority, where the total amount of tax (State or local), on any one purchase is \$10 or less.

[45 FR 9267, Feb. 12, 1980]

PART 8-12—LABOR

Subpart 8-12.3—Contract Work Hours and Safety Standards Act (Other Than Construction Contracts)

Sec.

8-12.304 Variations and tolerances.

Subpart 8-12.8—Equal Opportunity in Employment

- 8-12.800 Scope of subpart.
- 8-12.803 Basic requirements.
- 8-12.803-2 Equal Opportunity clause.
- 8-12.805 Administration.
- 8-12.805-1 Duties of agencies.
- 8-12.805-2 Educational responsibility.
- 8-12.805-4 Reports and other required information.
- 8-12.805-5 Compliance reviews.
- 8-12.805-6 Complaints.
- 8-12.805-8 Assumption of jurisdiction by or referrals to the Director.
- 8-12.805-9 Sanctions and penalties.
- 8-12.805-10 Disputed matters related to the equal opportunity program.
- 8-12.805-11 Preaward notices.
- 8-12.807 Hearings.
- 8-12.807-1 General.
- 8-12.809 Intimidation and interference.
- 8-12.810 Affirmative action compliance programs.
- 8-12.810-50 Philadelphia and other plans.
- 8-12.812 Rulings and interpretations.
- 8-12.813 Solicitations or advertisements for employees.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210 (c).

Subpart 8-12.3—Contract Work Hours and Safety Standards Act (Other Than Construction Contracts)

§ 8-12.304 Variations and tolerances.

When a contract is for nursing home care, the clause prescribed by FPR 1-12.303 will be modified to reflect the variation set forth in 29 CFR 5.14(d)(3) as follows: "In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to

pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended."

[43 FR 45363, Oct. 2, 1978]

Subpart 8-12.8—Equal Opportunity in Employment

SOURCE: 35 FR 15213, Sept. 30, 1970, unless otherwise noted.

§ 8-12.800 Scope of subpart.

Subpart 1-12.8 of the Federal Procurement Regulations implements the rules and regulations of the Secretary of Labor with respect to the Equal Employment Opportunity Program enunciated in Executive Orders 11246 (30 FR 12319) and 11375 (32 FR 14303). This Subpart 8-12.8 implements and supplements the provisions of FPR 1-12.8 and establishes the policies and procedures of the Veterans Administration with respect to the Equal Opportunity Program in Government contracts.

§ 8-12.803 Basic requirements.

§ 8-12.803-2 Equal Opportunity clause.

The words "race, color, religion, sex, or national origin" will be used in lieu of the words "race, creed, color, or national origin" wherever they appear in

the Equal Opportunity clause (FPR 1-12.803-2).

§ 8-12.805 Administration.

§ 8-12.805-1 Duties of agencies.

(a) The Director, Contract Compliance Service, Central Office is the VACCO (Veterans Administration Contract Compliance Officer). He is responsible for developing, causing to be published in this Chapter 8, Title 41, Code of Federal Regulations, and enforcing the Veterans Administration program and procedures necessary to carry out the provisions of the Executive orders and directives of the Director, Office of Federal Contract Compliance (OFCC), dealing with this program.

(b) Prior to awarding a nonexempt supply or service (excluding construction) contract (\$10,000 or more), the contracting officer will, not less than 10 days prior to the date on which an award must be made, submit to the VACCO (09) by teletype the following:

(1) Name and complete address of the apparent low bidder.

(2) Name of the official signing bid or proposal.

(3) Date on which the bidder's or offeror's proposal will expire.

(4) Amount of the contract.

(5) Brief description of goods or services to be provided.

(6) Number of employees of bidder.

(7) Facility where contract work will be performed.

(8) Standard Industrial Classification Code of production facility.

(9) Prior Federal contracts held by bidder (agency, amount of contract, date of award) since July 1, 1968.

(10) Has bidder filed all compliance reports required by Executive Orders 10925, 11114 and 11246.

(11) Has bidder certified that he has no segregated facilities.

(12) In case bidder has 50 or more employees and the contract is for \$50,000 or more, has the bidder developed written affirmative action programs (EEO) for each of his establishments.

(13) If this is initial Federal contract for bidder who has 50 or more employees and the contract is for \$50,000 or more, does the bidder agree to develop

written affirmative action programs (EEO) for each of his establishments within 120 days of contract award.

(14) Date Equal Employment Opportunity clearance is required.

NOTE: Thirty days' advance request is required for contracts for supplies in case of contracts in excess of \$1 million; as early notice as possible, and not less than 10 days where possible in all other cases.

(15) Names and addresses of identified subcontractors.

(c) On receipt of the information in paragraph (b) of this section, the VACCO will:

(1) Advise the contracting officer that the evidence available to him indicates that the apparent low bidder or offeror and his subcontractor(s), if any, can comply with the Equal Opportunity clause in the plants specified in the proposed contract and that a contract may be awarded. The teletype submitted by the contracting officer will be stamped "Awardable" and returned; or

(2) Furnish the contracting officer a teletype listing the deficiencies in the proposed contractor's or subcontractor's equal opportunity compliance status which must be corrected prior to an award.

(d) The contracting officer, on receipt of advice from the VACCO, will advise the prospective contractor in writing that:

(1) The award is being made; or

(2) Certain deficiencies, which are listed herein, have been found in his compliance with the equal opportunity program and that a contract cannot be awarded to him until such time as he has satisfied the VACCO that he has corrected or will correct such deficiencies.

(e) Field station contracting officers prior to awarding a nonexempt construction contract of \$100,000 or more will, not less than 10 days prior to the date on which an award must be made, submit to the VACCO by teletype the following:

(1) Name and address of the apparent low bidder.

(2) Name, title, and telephone number of the official signing the bid or proposal.

(3) Date on which bidder's or offeror's proposal will expire.

(4) Amount of contract.

(5) Brief description of the construction to be performed.

(6) Prior contracts, if any, with the Veterans Administration (amount, station and date of such contracts).

(7) Prior contracts, if any, with other Federal Government agencies (the last and largest; amount, date, agency, and agency location where performed).

(8) Current contracts with any Federal Government agency (amounts, locations, agencies).

(9) Names and addresses of identified subcontractors.

(10) Name and telephone number of contracting officer.

(f) On receipt of the information specified in paragraph (e) of this section, the VACCO will:

(1) Advise the contracting officer by telephone that the evidence available to him indicates that the apparent low bidder or offeror and his subcontractor(s), if any, are capable of complying with the Equal Opportunity clause and that a contract may be awarded. The teletype submitted by the contracting officer will be stamped "Awardable" and returned; or

(2) Furnish the contracting officer by teletype a listing of the deficiencies in the proposed contractor's or subcontractor's equal opportunity compliance status which must be corrected prior to award.

(g) The contracting officer, on receipt of advice from the VACCO, will advise the prospective contractor in writing that:

(1) The award is being made; or

(2) Certain deficiencies, which are listed herein, have been found in his, or his subcontractor's, compliance with the equal opportunity program and that a contract cannot be awarded until such time as he has satisfied the VACCO that the deficiencies have been or will be corrected.

(h) If determined by the VACCO that the deficiencies noted in either a prospective supply or construction contractor's, or his subcontractor's, equal opportunity program will be corrected during the life of the contract,

and if requested by the VACCO, the contract will be modified to so provide.

[35 FR 15213, Sept. 30, 1970, as amended at 38 FR 10008, Apr. 23, 1973]

§ 8-12.805-2 Educational responsibility.

The VACCO will develop informational and educational literature which he considers necessary to enable a contracting officer to properly administer a contract subject to the equal opportunity program. This literature will be distributed through the Director, Supply Service.

§ 8-12.805-4 Reports and other required information.

(a) *Requirements for prime contractors and subcontractors.* (1) Each current contractor having a Government contract in excess of \$10,000 and having 100 or more employees will be advised by the contracting officer to submit to the committee specified in SF 100, by the date required, a properly executed SF 100. He will also be requested to advise each of his subcontractors, if any, who meet the filing requirements to complete and submit this form.

(2) Each person who is required to submit a report in accordance with paragraph (a)(1) of this section will, when awarded a contract, be advised to submit a SF 100 to the VACCO within 30 days after the award to him of a contract or subcontract, unless such a report has been filed within 12 months preceding the date of award.

(3) The VACCO will, when advised by a contracting officer of the award of a contract subject to the Equal Opportunity clause, advise the contractor of his and his subcontractor's responsibility to timely file complete and accurate reports as required by FPR 1-12.805-4. He will also advise him that failure to file such required reports can and will result in the imposition of sanctions. The VACCO will advise the Director, Office of Federal Contract Compliance, when a contractor or subcontractor fails to timely file such reports.

(b) *Requirements for bidders or prospective contractors.* Where an apparent successful bidder or offeror indicates that he has been awarded a con-

tract, or subcontract, subject to the clause but has not filed the required reports, the award will be withheld pending the receipt of a representation from the bidder or offeror that he has submitted, or his written assurance that he will submit, all required compliance reports for the period covered by his previous contract or subcontract. Further that he will not make an award to any proposed subcontractor, who has failed to file a required report, until he has received from him a signed statement that he has filed, or his written assurance that he will file, any such required report.

(c) *Noncompliance by a prospective contractor.* Where a prospective contractor indicates that he will not comply with the provisions of the clause, his bid or proposal will be rejected as nonresponsive. Reports of such instances and their consequences will be referred to the VACCO, through the Director, Supply Service, for such further action as may be indicated.

§ 8-12.805-5 Compliance reviews.

(a) Upon receipt of a bid or offer for supplies, equipment or services, other than construction, in an amount of \$1 million or more, the contracting officer will, not less than 30 days prior to the date on which the acceptance of the bid or offer expires, submit the following information by teletype to the VACCO through the Director, Supply Service.

(1) The name of the official signing the bid or proposal;

(2) The dollar amount of the bid or offer;

(3) The date on which the bidder's or offeror's bid or proposal will expire; and

(4) The date on which the contracting officer must receive advice from VACCO in order to award a valid and binding contract.

(b) The VACCO will comply with the requirements of FPR 1-12.805-5(d) and advise the contracting officer as to whether or not the apparent low bidder or offeror, and his known first tier subcontractors, can comply with the Equal Opportunity clause.

(c) Any contract entered into by the Veterans Administration, that is not

exempt from the provisions of the Equal Opportunity clause as set forth in FPR 1-12.804-1, and any subcontract resulting from such contract will, during the life of the contract or subcontract, be subject to compliance reviews conducted by the VACCO, or the contract compliance officer of a designated compliance agency. Such reviews may cover all plants, facilities and practices of the contractor and/or subcontractor and will include all elements of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor dealing with the program.

(d) If during the administration of a contract subject to the clause, or as a result of an oral complaint, the contracting officer suspects that the contractor has breached the Equal Opportunity clause, he shall immediately bring this to the attention of the VACCO. The VACCO shall initiate an immediate investigation and notify the contracting officer of any action that is to be taken. A copy of such notification will be given to the Director, Supply Service.

§ 8-12.805-6 Complaints.

(a) When a complaint involving the equal opportunity program is received by a contracting officer, he will, if the complaint is oral, advise the complainant to submit his complaint in writing to the VACCO. The complainant will be advised to include in his complaint the information required by FPR 1-12.805-6(c). Written complaints received by a contracting officer will be forwarded immediately to the VACCO through the Director, Supply Service.

(b) Complaints alleging violations of the Equal Opportunity clause will, when received by the VACCO, be processed in accordance with the provisions of FPR 1-12.805-6 and 1-12.805-7.

§ 8-12.805-8 Assumption of jurisdiction by or referrals to the Director.

(a) Should the Director, Office of Federal Contract Compliance assume jurisdiction over a matter pending before the Veterans Administration, or should this agency refer a pending matter to the Director, the VACCO

will immediately notify the appropriate contracting officer of such action. The Director on assuming such jurisdiction may conduct, or have conducted, such investigations, hold such hearings, make such findings, issue such recommendations and directives, order such sanctions and penalties, and take such other action as may be necessary or appropriate to achieve the purpose of the order. Upon receipt of notice from the Director that corrective action is to be taken or that sanctions are to be imposed by the agency, the VACCO shall immediately notify the appropriate contracting officer of such instructions. He shall also inform the contractor or subcontractor involved of the corrective action, as directed by the Director, that must be taken and the time limit in which such corrective action must be accomplished. The VACCO shall notify the Director, Office of Federal Contract Compliance, within the time specified by him, as to the results of the actions taken by the contractor or subcontractor.

(b) The appropriate contracting officer will be notified by the VACCO when the corrective action(s), as directed by the Director, Office of Federal Contract Compliance, has been accomplished by the contractor or subcontractor, or when the cause(s) which necessitated the imposition of sanctions has been removed.

(c) In each of the actions specified in this section involving a Veterans Administration contract, a copy of the notice to the contracting officer will also be furnished to the Director, Supply Service.

§ 8-12.805-9 Sanctions and penalties.

(a) When a complaint, investigation, or compliance review reveals the existence of a violation of the Equal Opportunity clause, the VACCO will immediately attempt to resolve the matter informally through conferences, conciliation, mediation and persuasion. If appropriate, he will also establish a program for future compliance. If the violation is not resolved by these means the contractor or subcontractor will be afforded an opportunity for a hearing as provided in FPR 1-12.807.

(b) If the VACCO determines that a current contract should be terminated in whole or in part because of violations of the Equal Opportunity clause, by the contractor and/or his subcontractor(s), he shall, after prior notification to the Director, Office of Federal Contract Compliance, forward to the contractor and/or subcontractor by certified mail, return receipt requested, a notice of the intended termination. The notice will advise the offender that he must, within 10 days after receipt of the notification, comply with the provisions of the contract or mail to the VACCO a request for a hearing. A copy of the notice furnished to the contractor or subcontractor shall be furnished all agencies by the VACCO. If, at the expiration of the 10-day period, the offender has not (1) complied with the terms of the contract, or (2) requested that he be granted a hearing, the contract or subcontract may be canceled, suspended or terminated. This latter action will, in the case of a Veterans Administration contract, be taken by the contracting officer when requested by the VACCO through the Director, Supply Service, and with the approval of the Administrator. If an agency, other than the Veterans Administration, is the contracting agency the matter will be referred to the Director, Office of Federal Contract Compliance, for necessary action.

(c) When reprocurement is required as a result of the actions taken in paragraph (b) of this section, it shall be accomplished in the same manner as any other action required as a result of a default.

(d) When because of failure to comply with the provisions of the Equal Opportunity clause of a Veterans Administration contract, the VACCO believes that debarment of a contractor or subcontractor is in order, he shall request such action in accordance with Subpart 8-1.6 of this title. If, however, the contract is with another agency he (the VACCO) will refer the matter to the Director, Office of Federal Contract Compliance, for necessary action.

(e) The Director, Supply Service, on the basis of information furnished to him by the VACCO, will compile,

maintain on a current basis, and distribute to all Veterans Administration contracting officers a list of those contractors and subcontractors who, because of violations of the program, have been declared ineligible to receive Government contracts by the Director, Office of Federal Contract Compliance.

§ 8-12.805-10 Disputed matters related to the equal opportunity program.

All invitations for bids and requests for proposals which will result in contracts subject to the Equal Opportunity clause will contain the following:

DISPUTED MATTER—EQUAL OPPORTUNITY PROGRAM

Any dispute arising under this contract relating to matters pertaining to the equal opportunity program will be handled pursuant to the provisions of the Equal Opportunity clause of this contract (subcontract or agreement), rather than the Disputes clause contained therein.

§ 8-12.805-11 Preaward notices.

When the Veterans Administration has been requested by the Director, Office of Federal Contract Compliance not to award a contract to a specific contractor, pending the conduct of a preaward compliance review, the VACCO shall, through the Director, Supply Service, immediately make this fact known to all Veterans Administration contracting officers. He shall also, through the Director, Supply Service, advise these contracting officers when, as a result of a preaward compliance review, a contract may be awarded.

§ 8-12.807 Hearings.

§ 8-12.807-1 General.

(a) The VACCO, or the person acting in that capacity, is hereby authorized to conduct informal hearings pursuant to FPR 1-12.807-2, involving violations of the Equal Opportunity clause, when the Veterans Administration is authorized to hold such hearings by the Director, Office of Federal Contract Compliance.

(b) The Director, Supply Service and Deputy Director, Supply Service are hereby authorized to conduct all formal hearings pursuant to FPR 1-12.807-3, involving violations of the

Equal Opportunity clause, when the Veterans Administration is authorized to hold such hearings by the Director, Office of Federal Contract Compliance.

(c) When a determination is made by the VACCO to institute debarment proceedings against a contractor, the hearing will be held by the Director, Office of Federal Contract Compliance, or the debarring official of the Veterans Administration (see § 8-12.805-9(d)).

(d) Hearings specified in paragraphs (a) and (c) of this section will be conducted in accordance with the procedures set forth in Subpart 8-1.6 of this chapter.

§ 8-12.809 Intimidation and interference.

The VACCO, as the representative of the Administrator of Veterans Affairs, is responsible for imposing the sanctions and penalties of Subpart D of the order, under the circumstances set forth in FPR 1-12.809.

§ 8-12.810 Affirmative action compliance programs.

(a) The contracting officer will, within 10 days after the award of a contract subject to the affirmative action compliance program (FPR 1-12.810), forward to the VACCO VA Form 09-2140, Report of Contract Award.

(b) When a compliance survey conducted by the VACCO or his designee discloses that the contractor or subcontractor has not, within 120 days after the award of such contract or subcontract, developed a written plan, or that the plan he has developed is not acceptable, the VACCO will advise him that he cannot be found to be in compliance with Executive Order 11246. He will advise the offender, by certified mail, of his failure and that he must show cause, within 30 days after receipt of such notice, why enforcement proceedings under section 209(b) of Executive Order 11246 should not be instituted. A copy of this notice will be furnished to the Director, Office of Federal Contract Compliance.

(c) Should the offender fail to show good cause for his failure or to develop

and implement an acceptable affirmative action program within the designated 30 days, the VACCO, with the approval of the Director, Office of Federal Contract Compliance, shall notify the offender in writing that the Veterans Administration intends to cancel or terminate his contract or subcontract and institute debarment proceedings. He shall also be advised that if he desires a hearing he must submit a request for such hearing to the VACCO within 10 days after receipt of the notice.

(d) The VACCO shall, within the 30-day show cause period, exercise every effort through conciliation, mediation and persuasion to resolve the deficiencies noted.

§ 8-12.810-50 Philadelphia and other plans.

(a) Field station contracting officers, in awarding contracts for construction projects in areas where the Department of Labor has developed federally imposed plans, or where locally developed plans with bidding restrictions are in effect, will assure themselves that all necessary bidding instructions contained in the appropriate plan have been complied with.

(b) The VACCO will, through the Director, Supply Service, advise station contracting officers of those areas in which such plans are in effect. Copies of plans now in effect, as well as those developed in the future may be secured from the Director, Supply Service.

[36 FR 18578, Sept. 17, 1971]

§ 8-12.812 Rulings and interpretations.

Questions concerning the application or interpretation of instructions concerning the equal opportunity program in Government contracting will be referred to the VACCO through the Director, Supply Service. If a ruling or interpretation of a higher authority is required it will be secured and the contracting officer advised.

§ 8-12.813 Solicitations or advertisements for employees.

Contractors and/or subcontractors who find it necessary to solicit or advertise for employees, in order to ful-

fill their contractual requirements, must, in their advertising, utilize one or more of requirements set forth in FPR 1-12.813.

PART 8-14—INSPECTION AND ACCEPTANCE

Subpart 8-14.1—Inspection

Sec.

8-14.105 Places of inspection

8-14.105-3 Inspection at destination.

8-14.105-51 Inspection of subsistence.

8-14.105-52 Waiver of USDA inspection and specifications.

8-14.105-53 Supply depot selection of samples for test.

8-14.150 Use of commercial organizations for inspection and grading services.

8-14.151 Determination authority.

8-14.152 Inspection of repairs for properties under loan guaranty and direct loan programs.

8-14.152-1 Repairs of \$1,000 or less.

8-14.152-2 Repairs in excess of \$1,000

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

Subpart 8-14.1—Inspection

§ 8-14.105 Places of inspection.

[32 FR 6605, Apr. 29, 1967]

§ 8-14.105-3 Inspection at destination.

(a) When inspection upon delivery indicates the items received are not in compliance with contract requirements, a report will be made to the contracting officer.

(b) VA supply depots will report all instances of noncompliance to the contracting officer on VA Form 10-2055, Sample Transmittal Sheet and Inspection Report. The supply depots are authorized to correct packaging, packing, or marking not in accordance with contract requirements when the cost of correcting a partial receipt or projected cost of correcting total receipt does not exceed \$100. When projected costs exceed \$100, authorization will be obtained from the contracting officer prior to taking corrective action. The corrections made and the actual amount to be charged to the vendor will be shown on the reverse of VA Form 10-2055.

[33 FR 9550, June 29, 1968, as amended at 41 FR 4016, Jan. 28, 1976]

§ 8-14.105-51 Inspection of subsistence.

(a) The contracting officer will determine at time of issuance of the solicitation whether inspection for specification compliance will be made (1) prior to shipment by representatives of the Department of Agriculture or the Department of Commerce or, (2) at time of delivery by personnel of the purchasing activity. The place of inspection will be indicated in the solicitation.

(b) When either the Department of Agriculture or the Department of Commerce is indicated as the inspection activity, the solicitation will also provide that the contractor is responsible for:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspection activity a certificate indicating the product complies with specifications. Such certificate, or copy, should accompany the shipment or be furnished to the receiving installation prior to shipment. The contractor shall notify the installation when the certificate is not immediately available.

(3) Seeing that acceptable products are covered by an inspection agency checkloading certificate or stamped by the inspector as prescribed by the contracting officer. Products not so identified shall be rejected.

(4) Furnishing samples for inspection at his/her expense.

(5) Indicating the address where inspection will be made.

(c) The contracting officer will furnish a copy of the purchase document to the inspecting activity.

[32 FR 6605, Apr. 29, 1967, as amended at 37 FR 2508, Feb. 2, 1972; 41 FR 4016, Jan. 28, 1976]

§ 8-14.105-52 Waiver of USDA inspection and specifications.

(a) Contracting officers may purchase butter; cheese (except cottage cheese); sausage; meat food products¹;

¹Meat food products shall mean processed foods containing meat in substantial proportion and other listed ingredients including seasoning, e.g., frankfurters, cold cuts.

bacon, smoked; and bacon, Canadian style, without reference to the specifications in VAPR Program Guide G-1, and the U.S. Department of Agriculture (USDA) inspection requirements of VA Form 10-1365, when the amount of an item to be purchased will not exceed 500 pounds per delivery. When these items are procured together with items that are not exempt the solicitation shall include the following:

Items ————— are not required to be in accordance with the specifications contained in VAPR Program Guide G-1, nor is the special USDA inspection required. Inspection for quality and condition will be made by VA upon delivery at destination. These items are, however, subject to the quality controls stated herein.

(b) As appropriate the following statements shall be included in each invitation for bid, request for proposal or purchase order.

(1) *Butter.* This product must be graded by the USDA and labeled "Grade A" or the grade specified herein.

(2) *Sausage and meat food products.*
(i) This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome, and fit for human consumption; and

(ii) This product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(3) *Bacon, smoked and bacon, Canadian style.* This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome, and fit for human consumption.

(c) When using a "brand name or equal" purchase description every brand name item that is known to be acceptable and available in the area will be listed.

Whole or prefabricated meats, e.g., pork chops, hamburger, are considered meats, not meat food products.

[36 FR 12217, June 29, 1971, as amended at 46 FR 31262, June 15, 1981]

§ 8-14.105-53 Supply depot selection of samples for test.

(a) The number of samples to be selected will be as stated in the item specifications or as specified by the contracting officer for items without lot numbers.

(b) On items bearing lot numbers, one unit will be selected from each lot to be tested, unless otherwise specified. Contracts will require that the contractor's shipping document or packing list indicate the lot numbers of items shipped to each depot on the contract. To reduce handling and transportation costs, samples of lots received at more than one location will be submitted as follows:

(1) The VA Supply Depot, Hines, Ill., will submit samples from all lots received.

(2) The VA Supply Depot, Somerville, N.J., will submit samples from lots not received at Hines.

(3) The VA Supply Depot, Bell, Calif., will submit samples from lots not received at Hines or Somerville.

(c) On drug items, when there is only one unit in the lot to be tested or when five or more lots on the same order require sampling, the contracting officer will be notified and requested to furnish instructions. Such notification will be transmitted by teletype.

(d) To facilitate handling and packing, samples may be consolidated into one package. However, under no circumstances will shipment of samples be held more than 48 hours from time of receipt.

[36 FR 12217, June 29, 1971, as amended at 41 FR 4016, Jan. 28, 1976]

§ 8-14.150 Use of commercial organizations for inspection and grading services.

Commercial organizations may be used for inspection and grading services when it is determined that the results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques, and it is further determined that:

(a) The Veterans Administration is unable to employ the personnel quali-

fied to properly perform the services and is unable to locate another Federal Agency capable of providing the service.

(b) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.

(c) The services may be performed without direct Government supervision.

[29 FR 7548, June 12, 1964]

§ 8-14.151 Determination authority.

The determinations required in § 8-14.150 will be made by:

(a) The Assistant Administrator for Construction, for those items and services for which purchase authority has been assigned to him/her.

(b) The Director, Veterans Canteen Service, DM&S, for those items and services purchased, or contracted for, by the Veterans Canteen Service (except those items purchased from Veterans Administration supply sources).

(c) The Assistant Administrator for Supply Services, for all other supplies, equipment and services.

[31 FR 14878, Nov. 24, 1966, as amended at 46 FR 31262, June 15, 1981]

§ 8-14.152 Inspection of repairs for properties under the loan guaranty and direct loan programs.

Final inspection will be made of all repair programs upon completion. In addition, such intermediate or progress inspections will be made on extensive or technical jobs as specified in the contract.

[30 FR 7600, June 11, 1965]

§ 8-14.152-1 Repairs of \$1,000 or less.

(a) Generally, inspections required will be made by the management broker. If the property has not been assigned to a management broker or if it has been determined that the nature of the repairs requires supervision by a technician, the inspection will be made by a qualified fee or staff inspector.

(b) There is no form prescribed for this inspection but VA Form 26-1839, Compliance Inspection Report, may be

used if desired. Regardless of the form in which the report is submitted, it will be in sufficient detail to identify the contractor, property, and the repair program and to enable the contracting officer to make a determination that the work is being performed satisfactorily or completed in accordance with the terms of the contract.

[30 FR 7601, June 11, 1965]

§ 8-14.152-2 Repairs in excess of \$1,000.

(a) The final inspection and any intermediate or progress inspections on repairs exceeding \$1,000 will be made by a qualified fee or staff inspector. If a management broker is qualified to supervise major repairs, he may be authorized to conduct the inspections.

(b) Report of inspections will be made on VA Form 26-1839, Compliance Inspection Report. The form will be completed to identify the property, contractor, and repair program and will also include such detailed information to enable the Contracting Officer to make a determination that the work is being performed satisfactorily or that it has been completed in accordance with the contract terms. Any deficiencies noted will be itemized and explained in detail.

[30 FR 7601, June 11, 1965]

PART 8-15—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 8-15.50—Contract Cost Principles and Procedures

Sec.

8-15.5000 Scope.

8-15.5001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

8-15.5001-1 Tuition.

8-15.5001-2 Special services or courses.

8-15.5001-3 Books, supplies, and equipment required to be personally owned.

8-15.5001-4 Medical services and hospital care.

8-15.5001-5 Administrator's Decision No. 557.

8-15.5001-6 Consumable instructional supplies.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

SOURCE: 30 FR 7601, June 11, 1965, unless otherwise noted.

Subpart 8-15.50—Contract Cost Principles and Procedures

§ 8-15.5000 Scope.

This subpart contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost reimbursement type contracts pertaining to the furnishing of vocational rehabilitation, education, and training to eligible veterans under chapter 31 of title 38, United States Code.

§ 8-15.5001 Allowable costs under cost reimbursement vocational rehabilitation and education contracts or agreements.

§ 8-15.5001-1 Tuition.

(a) Except as provided in this section when the contractor has a customary cost of tuition the charge to the Veterans Administration may not exceed that charged to similarly circumstanced nonveteran students: *Provided*, That where the contractor has more than one standard charge for the same service, the charge to the Veterans Administration will be the lowest price for the entire course, semester, quarter, or term which is offered or published.

(b) Tuition or incidental fees may not be paid to institutions or establishments furnishing apprentice or other training on-the-job. However, such charges customarily made by non-profit workshop or similar establishment for providing work adjustment training to similarly circumstanced nonveterans may be paid even though an incentive wage is paid the trainee as part of the training.

(c) When the total cost of instruction is paid from Federal funds or a portion of the cost is covered by grants from the Federal Government, i.e., Smith-Hughes or other laws, excluding Federal Land Grant Funds, such subsidy will be taken into consideration in determining the charge to the Veterans Administration. The term, Federal Land Grant Funds, refers to those received under the Morrill-Nelson Act (Morrill Acts of 1862 and 1890 and the Nelson amendment of

1907) and section 22 of the Bankhead-Jones Act of 1935.

(d) Payments on behalf of a veteran who receives a fellowship, scholarship, grant-in-aid, assistantship, or similar award in complete or partial payment of tuition or fees or both will be made in accordance with the following:

(1) The award will reduce, to the extent of the award, the amount of tuition or fee or both that is payable by the Veterans Administration.

(2) Awards which are not paid in cash, except those which are made specifically for the purpose of defraying the cost of room and board in dormitories which will be disregarded, will reduce to the extent of the award the charges for which the Veterans Administration is responsible.

(3) Cash awards may be retained by the veterans and will not be deducted from charges ordinarily paid by the Veterans Administration.

(4) Waivers of tuition and fees provided under law by States or other Government authority will be utilized to reduce the charges payable by Veterans Administration in accordance with such waivers.

(e) Enrollment fees in an amount sufficient to cover the cost of registration may be paid, provided the institution or training establishment usually makes such a charge, and it does not exceed that charge made to other students or trainees.

§ 8-15.5001-2 Special services or courses.

Special services or courses are those services requested by the Veterans Administration which are over and above those customarily required by the institution for similarly circumstanced nonveterans and are considered by the Contracting Officer to be necessary for the vocational rehabilitation of the trainee. The costs of such special services or courses will be negotiated prior to being requested by the Veterans Administration.

§ 8-15.5001-3 Books, supplies, and equipment required to be personally owned.

(a) Reimbursement for books, supplies, or equipment and referred to as supplies, will be made as provided in this section.

(1) Reimbursement will be made for those supplies customarily required to be owned personally by all students taking the same course or courses. In no instance will the supplies be in a greater variety, quality, or amount than required of nonveteran students. In this instance required is in contradistinction to requested or desirable to have or necessary for a future profession or job but not required by the institution of all students in the course.

(2) When supplies are available in several prices, grades, or qualities, reimbursement may be made only for such quality or grade that will meet the requirements.

(3) Partial payment agreements in which the Veterans Administration shares payment with the veterans is not allowable.

(4) The costs incurred by the institution in connection with the veteran's thesis such as typing, printing, microfilming, or otherwise reproducing the required number of copies; research expenses when certified by the veterans committee chairman, major professor, department head, or appropriate dean that such expenses are required in order to complete the course requiring the preparation of a thesis are considered as supplies and are authorized for reimbursement.

(5) When the institution operates a bookstore or supply store for all students the reimbursement for supplies issued to trainees will be no greater than charges made to nonveteran students.

(6) Where the institution arranges for issuance of supplies to all students by stores or establishments not institutionally owned and to pay such store or establishment for supplies issued to trainees, reimbursement is allowable provided the charges are no greater than those paid by nonveteran students or to the institutions whichever is the lesser.

(7) Supplies purchased by the institution specifically for trainees will be reimbursed at the net cost to the institution.

(8) Where it is customary in a survey subject to permit each student to obtain the aggregate of books for the subject on a rental basis (commonly referred to as a rental set) and the

ownership or permanent possession by the student is not required, reimbursement is authorized for the rental charge provided it does not exceed the charge made to nonveteran students.

(9) Educational and training institutions furnishing supplies to trainees which are required to be owned personally or on a rental basis by all students pursuing the same or similar course may be compensated for such services in an amount not exceeding 10 per centum of the allowable charge for the supplies furnished or rented except:

(i) Where the tuition covers the charges for supplies or rentals or a stipulated fee is assessed all students, handling charges are not allowable.

(ii) The handling charge is not allowable for Government-owned books procured by the institution from the Library of Congress.

(iii) In cases where an item of equipment will exceed \$50 in cost, effort will be made to secure a lower handling charge than for those costing a lesser amount. The agreed per centum for such handling charges will be included in the contract or added as an addendum.

§ 8-15.5001-4 Medical services and hospital care.

(a) Where the medical service and hospital care provided by an institution through payment of its customary student health fee are considered adequate for trainees under chapter 31, title 38, United States Code, payment for such fee may be authorized.

(b) Where medical services or hospital care not covered by the customary students health fee are available in the school operated facilities or arrangements have been made by the institution with doctors and hospitals in the immediate area, reimbursement for such services may be included in the contract or agreement provided they do not exceed the general rates established for such services by the Chief Medical Director.

(c) If there is a Veterans Administration contract with a public or private institution or clinic for furnishing outpatient treatment or hospitalization in the area of the school or place of training, reimbursement under para-

graph (b) of this section will not be allowable except where the Manager, VA Regional Office, determines that the interests of the veterans would best be served by treatment or hospitalization in the school operation facilities.

§ 8-15.5001-5 Administrator's Decision No. 557.

(a) Fees and expenses authorized under Administrator's Decision No. 557 may be authorized for payment when the educational institution or training establishment makes such payments on behalf of the veteran.

(b) Payment for fees and expenses not made by the educational institution or training establishment will be made in accordance with Subpart 8-3.6 of this chapter or FPR 1-3.210(a)(1).

§ 8-15.5001-6 Consumable instructional supplies.

(a) Reimbursement for consumable instructional supplies which institutions require for the instruction of all students, veteran or nonveteran, pursuing the same or comparable course or courses will be made when:

(1) The supplies are entirely consumed in the fabrication of a required project.

(2) The supplies are not consumed but are of such a nature that they cannot be salvaged from the end product for reuse for further instructions by disassembling or dismantling the end product.

(b) Reimbursement for consumable instructional supplies is not allowable when:

(1) The supplies can be salvaged for reuse.

(2) The supplies used in a project which has been elected by the student as an alternate class project in order to produce an end product of greater value than that which is normally required to learn the skills of the occupation and which will become his property upon completion.

(3) The supplies used in a project which has been selected by the institution to provide the student with a more elaborate end product than is required to provide adequate instruction

as an inducement to the veteran to elect a particular course of study.

(4) The salable value of the end product is equal to or greater than the cost of the supplies used in its fabrication or assembly and a reasonable use has not been made of such supplies so that they are not readily salvaged from the end product to be reused for instructional purposes.

(5) The end product is of permanent value and retained by the institution.

(6) A third party provides the articles or equipment for repair or improvement and for which he would otherwise pay a commercial price.

(7) The number of projects resulting in end products in excess of the numbers normally required to teach the recognized job operations and processes of the occupation stipulated in the approved course of study.

(8) The cost of supplies are included in the charge for tuition or as a fee designated for such purpose.

PART 8-16—PROCUREMENT FORMS

Subpart 8-16.3—Purchase and Delivery Order Forms

Sec.

- 8-16.300 Scope of subpart.
- 8-16.301 Order invoice-voucher forms.
- 8-16.301-2 Order for supplies or services (VA Forms 07-2138 and 07-2139).
- 8-16.301-50 Advertising order (SF 1143).
- 8-16.350 Use of purchase orders.
- 8-16.350-1 Special forms.

Subpart 8-16.4—Forms for Advertised Construction Contracts

- 8-16.401 Forms prescribed.
- 8-16.402 Required use.
- 8-16.402-2 Contracts estimated to exceed \$2,000 but not to exceed \$10,000.

Subpart 8-16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect-Engineer Contracts)

- 8-16.501 Contract forms.

Subpart 8-16.7—Forms for Negotiated Architect-Engineer Contracts

- 8-16.701 Forms prescribed.
- 8-16.703 Terms, conditions, and provisions.

Subpart 8-16.95—Contract Formats

Sec.

- 8-16.9500 Scope.
- 8-16.9501 Definitions.
- 8-16.9502 Scarce medical specialist services.
- 8-16.9502-1 Use of appendixes in scarce medical specialist services contracts.
- 8-16.9502-2 Format for appendixes to scarce medical specialist services contracts.
- 8-16.9503 Exchange of use of specialized medical resources.
- 8-16.9503-1 Use of appendixes in exchange of use of specialized medical resources contracts.
- 8-16.9503-2 Format for appendixes to exchange of use of specialized medical resources contracts.
- 8-16.9503-3 Mutual use of specialized medical resources provided to a VA hospital.
- 8-16.9503-4 Use of appendixes in contracts for mutual use of specialized medical resources provided to a VA hospital.
- 8-16.9503-5 Format for appendixes for contracts for mutual use of specialized medical resources provided to a VA hospital.
- 8-16.9504 Mutual use of specialized medical resources provided by a VA hospital.
- 8-16.9504-1 Use of appendixes in contracts for mutual use of specialized medical resources provided by a VA hospital.
- 8-16.9504-2 Format for appendixes for contracts for mutual use of specialized medical resources provided by a VA hospital.

AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 390; 38 U.S.C. 210, 40 U.S.C. 486(c).

Subpart 8-16.3—Purchase and Delivery Order Forms

- § 8-16.300 Scope of subpart.

This subpart states the policy with respect to use of purchase orders, prescribes forms for use in addition to those prescribed in FPR 1-16.3, and provides instructions for the preparation of purchase orders.

[28 FR 2344, Mar. 21, 1963]

- § 8-16.301 Order invoice-voucher forms.

[28 FR 2344, Mar. 21, 1963]

- § 8-16.301-2 Order for supplies or services (VA Forms 07-2138 and 07-2139).

VA Form 07-2138, Order for Supplies or Services, and VA Form 07-2139, Order for Supplies or Services

(Continuation), are prescribed for use in § 8-3.605-3 of this chapter.

[38 FR 10007, Apr. 23, 1973]

§ 8-16.301-50 Advertising order (SF 1143).

(a) This form, together with its memo copy 1143a, is a multipurpose order, invoice, voucher form prescribed for purchase of advertising services.

(b) Orders for paid advertising may be placed upon written authorization of the Administrator or one of the officials designated in VA Regulations 3 and 4 (38 CFR 2.3 and 2.4). The block in the upper right corner of the form will cite the letter or regulation authorizing advertising. Contracting officers may execute purchase orders based on such written authorizations, and the block in the lower left corner of the form will cite this paragraph as the instrument assigning administrative duties.

[28 FR 2344, Mar. 21, 1963, as amended at 33 FR 14702, Oct. 2, 1968]

§ 8-16.350 Use of purchase orders.

Except for drop shipment contracts and as provided in FPR 1-3.6 and Subpart 8-3.6 or in this Subpart 8-16.3, all purchases of supplies, equipment, and services will be by means of one of the purchase forms prescribed in these subparts.

[29 FR 14365, Oct. 17, 1964]

§ 8-16.350-1 Special forms.

Special order forms for medical, dental, and ancillary services and beneficiary travel are prescribed in § 8-3.605-3.

[38 FR 10007, Apr. 23, 1973]

Subpart 8-16.4—Forms for Advertised Construction Contracts

SOURCE: 34 FR 12783, Aug. 6, 1969, unless otherwise noted.

§ 8-16.401 Forms prescribed.

(a) In contracting for repairs to homes acquired by the Veterans Administration through the operation of the Loan Guaranty Program, VA Form 26-6724, Invitation, Bid and/or Acceptance or Authorization, will be

used. This form may also be used in negotiating contracts.

(b) Contracts authorized to be made by management brokers in amounts of \$200 or less will be made as prescribed by the Chief Benefits Director.

[34 FR 12783, Aug. 6, 1969, as amended at 35 FR 8485, June 2, 1970]

§ 8-16.402 Required use.

§ 8-16.402-2 Contracts estimated to exceed \$2,000 but not to exceed \$10,000.

Standard Form 22, Instructions to Bidders, will be used in all advertised construction contracts, other than those specified in § 8-16.401, which are estimated to cost in excess of \$2,000 but not more than \$10,000.

Subpart 8-16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect-Engineer Contracts)

§ 8-16.501 Contract forms.

(a) *General.* The special contract forms described in this section have been developed on the basis of work simplification because of the extensive use of such contracts, and on the need to provide guidance in the area of their special provisions (i.e., those provisions relating particularly to the reason for the contract). General provisions, i.e., those relating to Government contracts in general or to specific categories of Government contracts, have been included as a matter of convenience as of the date the form was revised. Such general provisions have been and are subject to frequent changes. Accordingly, in using forms prescribed in paragraphs (b) and (c) of this section, officers must assure that the appropriate statutory and regulatory clauses and provisions currently prescribed by FPR 1-7.1, FPR Temporary Regulations, and Subpart 8-7.1 of Part 8-7 of this Chapter are included. Amendments to such forms are authorized for that purpose. Contracts for other types of negotiated nonpersonal service contracts will be individually prepared, and will make the maximum feasible use of the forms prescribed in FPR 1-16-1.

(b) *Education and rehabilitation contracts.* The following VA forms are prescribed for use when entering into contracts relating to education and rehabilitation services:

(1) VA Form 22-1903, Contract for Education and Training.

(2) VA Form 22-1905, Authorization and Certification of Entrance or Reentrance Into Training.

(3) VA Form 22-1931, Contract for Services Relating to Vocational Counseling.

(4) VA Form 21E-1933, Contract for Services Relating to Vocational Counseling.

(c) *Nursing home contracts.* Contracts for nursing home care will utilize VA Form 10-1170, Application and Contract for Furnishing Nursing Home Care to Patients of the Veterans Administration.

(d) *Other contracts for medical and ancillary services.* Formats for contracts for scarce medical specialist services and for sharing agreements are illustrated in Subpart 8-16.95 of this part.

[38 FR 10008, Apr. 23, 1973]

Subpart 8-16.7—Forms for Negotiated Architect-Engineer Contracts

§ 8-16.701 Forms prescribed.

VA Form 08-6298, Architect-Engineer Fee Proposal, will be used in obtaining the proposal and supporting cost or pricing data in negotiated architect-engineer contracts as required by § 8-4.1005-4.

[41 FR 3293, Jan. 22, 1976]

§ 8-16.703 Terms, conditions, and provisions.

(a) In addition to the requirements of Standard Form 253, General Provisions (Architect-Engineer Contract), contracting officers at both the Central Office and field station level will review, be guided by, and include in all negotiated architect-engineer contracts the mandatory, and where necessary, authorized revisions set forth in VA Form 08-6279, Special Provisions (Architect-Engineer Contract). In case of small and uncomplicated projects for which other contract

forms are more appropriate, the use of VA Form 08-6279 is not mandatory.

(b) Additions, deletions, alterations to or deviations from the Special Provisions, except as authorized in the Instructions for Use, will not be made without the prior written approval of the Assistant Administrator for Construction. The approval, when given, will be made a part of the contract file.

[36 FR 18174, Sept. 10, 1971, as amended at 38 FR 26369, Sept. 20, 1973]

Subpart 8-16.95—Contract Formats

SOURCE: 35 FR 17252, Nov. 10, 1970, unless otherwise noted.

§ 8-16.9500 Scope.

This subpart prescribes the formats that shall be utilized by Veterans Administration contracting officers, when executing contracts for the acquisition of scarce medical specialist services authorized by 38 U.S.C. 4117 and for the exchange of use or mutual use of specialized medical resources authorized by 38 U.S.C. 5053.

(a) Contracts for scarce medical specialist services may be entered into only with medical schools and clinics and must provide that the services will be rendered at VA facilities.

(b) Contracts for the exchange of use and mutual use of specialized medical resources may be entered into only with other hospitals (or medical schools or other medical installations having hospital facilities) in the medical community.

(c) When because of special conditions or circumstances it is essential that certain terms and conditions, other than those specified herein, be incorporated in a contract for these services or resources, the contracting officer shall develop the special terms and conditions and incorporate them in the proposed contract.

(d) Contracts specified in paragraphs (a) and (b) of this section will be entered into for a period of 1 year only. They shall not be renewed, but may be renegotiated. The renegotiated proposal, together with supporting justification, will be submitted to Cen-

tral Office for approval by the Chief Medical Director or his designee.

§ 8-16.9501 Definitions.

The terms "clinic" and "medical specialist" have been defined by the Comptroller General in his decision B169747, dated June 24, 1970, to the Administrator. Therefore, as used in this subpart, they have the following meanings:

(a) *Clinic*. Any medical organization which is capable of contracting for and furnishing the services in question.

(b) *Medical Specialist*. Includes any professional or technician who performs specialist services related to providing medical care and attention.

§ 8-16.9502 Scarce medical specialist services.

The -----¹ (hereinafter called the Contractor) agrees, in accordance with the terms and conditions stated herein, to furnish to and at the Veterans Administration Hospital -----² hereinafter called the VA) the services specified and at the prices specified in the appendixes attached to this contract. The initial listing of services to be furnished shall be identified as "Appendix A," and each succeeding appendix as "Appendix B", "Appendix C", etc. Each such appendix shall be attached to and become a part of this contract.

1. *Services*. a. The services specified in any of the attached appendixes may be added to or terminated by written amendment to this contract. The amendment will be prepared by the VA Contracting Officer and, prior to becoming effective, shall be approved by the VA Chief Medical Director or his designee.

b. The personnel furnished by the Contractor to perform the services specified herein may be any combination of full-time assignments, consultants and attendings necessary to provide full and complete technical and/or professional direction in cooperation with the total medical staff coverage of all functions contracted for.

c. All other necessary personnel for the operation of the services contracted for at the VA will be provided by the VA at levels mutually agreed upon which are compatible with the safety of the patient and personnel and with quality medical care programming.

d. The services to be performed by the Contractor will be performed within the VA

policies and procedures and the regulations of the medical staff bylaws of the hospital.

e. The services to be performed by the Contractor will be under the direction of -----³ VA Hospital -----⁴.

2. *Term of contract*. This contract when accepted by the Contractor and the VA Contracting Officer shall be effective from -----⁵ through -----⁶.

3. *Termination*. This contract will remain in force during the period stated unless terminated at the request of either party after thirty (30) days' notice in writing. To the extent that this contract is so terminated, the VA will be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

4. *Payment*. Payment for services rendered by the Contractor will be made -----⁷ on receipt of a properly executed invoice.

5. *Qualifications*. The physicians assigned by the Contractor to perform the services covered by this contract shall be licensed in a State, Territory, or Commonwealth of the United States or the District of Columbia. The qualifications of such personnel shall also be subject to review by the VA Chief of Staff and approval by the VA Hospital Director.

6. *Workdays*. a. The services covered by this contract shall be furnished by the Contractor on all workdays. The Contractor will not be required, except in case of an emergency, to furnish such services on a national holiday or during nonworking hours.

b. The following terms as used herein have the following meaning:

(1) *Workday*—Monday through Friday, 8 a.m. to 4:30 p.m.

(2) *National Holiday*—The nine holidays observed by the Federal Government, i.e., New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving, and Christmas. Also any other day specifically declared by the President of the United States to be a national holiday.

(3) *Nonworking hours*—Monday through Friday, 4:30 p.m. to 8 a.m. and all Saturdays and Sundays.

7. *Personnel policy*. The Contractor shall assume full responsibility for the protection of his personnel furnishing services under this contract, in accordance with the personnel policy of the Contractor, such as providing workmen's compensation, insurance,

³ Enter the title of the VA official under whose direction each service will be performed.

⁴ Enter frequency, e.g., monthly, quarterly, etc.

⁵ Enter beginning and ending dates.

¹ Enter University Medical School or Clinic.

² Enter address of VA hospital.

health examinations, and social security payments. Such personnel shall not be considered VA employees for any purpose.

8. *Officials not to benefit.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

9. *Equal opportunity.* a. The Contractor agrees that he will furnish the services covered by this contract to any beneficiary of the VA without regard to the race, color, religion, sex or national origin of such beneficiary.

NOTE: When it is determined by the VA Contracting Officer that the funds to be expended by the VA under this contract will exceed \$10,000, the following clauses shall be included in the contract:

b. VA Form 07-2135, Equal Opportunity Clause for Government Contracts, is attached to and made a part of this contract.

c. Certification of Nonsegregated Facilities.

By affixing his signature to this contract the Contractor certifies that he does not and will not maintain or provide, for his employees at any of his establishments, facilities which are segregated on the basis of race, color, religion or national origin. The term "segregated facilities" as used herein means those facilities specified in 41 CFR 1-12.803-10(d)(1).

NOTE: When it is determined by the VA Contracting Officer that the funds to be expended by the VA under this contract will exceed \$50,000 and that the Contractor has in his employ 50 or more employees, the following clause shall be included in the contract:

d. *Affirmative Action Compliance Program.*

(1) The Contractor shall, within 120 days after the award, develop and maintain a separate written affirmative action compliance program for each of his establishments. The Contractor shall require each Subcontractor having 50 or more employees, to whom he awards a subcontract amounting to \$50,000 or more, to develop and maintain a separate written affirmative action compliance program for each of his establishments. This program shall be developed within 120 days after such an award.

(2) Each affirmative action program shall be developed in conformity with the Rules and Regulations of the Office of Federal Contract Compliance, U.S. Department of Labor (Title 41, Part 60-2, Chapter 60, Code of Federal Regulations). Each program shall be maintained at the local office responsible for personnel matters of the particular establishment and shall be made available for inspection by representatives of the Office

of Federal Contract Compliance, or such agency as may be designated as the Compliance Agency, upon request.

(3) The offeror certifies by completing whichever of the following is appropriate that he regularly employs:

(i) ☐ Less than 50 employees.

(ii) ☐ 50 or more employees and maintains a written affirmative action program for each of his establishments in accordance with Title 41, Part 60-2, Chapter 60 of the Code of Federal Regulations.

(iii) ☐ 50 or more employees and agrees to develop, within 120 days after award of this contract, a written affirmative action program for each of his establishments in accordance with Title 41, Part 60-2, Chapter 60 of the Code of Federal Regulations.

10. *Disputes.* a. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Administrator of Veterans Affairs. The decision of the Administrator or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

b. This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph a above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representatives, or board on a question of law.

11. *Contingent fee.* The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies main-

tained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

12. *Contractor represents.* a. The Contractor represents (1) that he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the Contractor) to solicit or secure this contract, and (2) that he ☐ has, ☐ has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the Contractor) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (1) and (2) above as requested by the Contracting Officer. The term "bona fide employee" as used herein is as specified in Title 41, Chapter 1, Subpart 1-1.5 of the Code of Federal Regulations.

b. The Contractor represents that he ☐ has, ☐ has not, participated in a previous contract or subcontract subject to the Equal Opportunity Clause herein and Executive Order No. 11246 of September 24, 1965; and he ☐ has, ☐ has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards.

13. *Examination of records.* The following clause shall be included in all contracts in which the cost to the VA will exceed \$2,500:

EXAMINATION OF RECORDS

The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this contract.

14. *Authority.* This contract is entered into under the authority of 38 U.S.C. 4117, and is negotiated under the authority of § 1-3.204 of the Federal Procurement Regulations.

Approved and accepted for

By _____
(Title) (Date)
Approved and accepted for

Veterans Administration

By _____
(Title) (Date)

§ 8-16.9502-1 Use of appendixes in scarce medical specialist services contracts.

a. The initial services and the cost of each service to be rendered by the contractor will be listed in the format illustrated in § 8-16.9502-2, designated "Appendix A" and made a part of the contract. Each succeeding listing which either adds to or deletes from the initial or subsequent listings will be covered by a contract amendment and will be designated as "Appendix B", "Appendix C", etc.

b. In negotiating the cost to be paid by the Veterans Administration for each service furnished by the contractor, contracting officers will assure themselves that the prices charged are equitable and just.

§ 8-16.9502-2 Format for appendixes to scarce medical specialist services contracts.

SCARCE MEDICAL SPECIALIST SERVICES TO BE FURNISHED BY THE GEORGE WASHINGTON UNIVERSITY MEDICAL SCHOOL TO THE VETERANS ADMINISTRATION HOSPITAL, 50 IRVING STREET, WASHINGTON, D.C.

Services	Cost
1. Furnish the services of _____ full-time equivalent radiologists to perform necessary radiological service which will include but not be limited to: _____ (1) Consultations referable to radiology. (2) Fluoroscopy. (3) Interpretation of radiographic interpretations.	¹ ()
2. Furnish the services of ¹ () _____ full-time equivalent physicians to perform necessary pathological service, which will include but not be limited to: _____ (1) Providing professional direction of the support personnel employed by the VA hospital. (2) Anatomic and clinical pathology. (3) Participation in conferences and clinical teaching.	

¹Enter number of full-time equivalent specialists to be contracted for.

²Enter cost of each service.

§ 8-16.9503 Exchange of use of specialized medical resources.

The Veterans Administration Hospital
_____ ¹ (hereinafter called the VA) and

¹ Enter the name and address of the VA Hospital.

the _____² (hereinafter called the _____²) agree, in accordance with the terms and conditions of this contract, to furnish to each other the resources as specified in the appendixes attached to this contract. The initial listing of resources shall be identified as "Appendix A" and each succeeding appendix as "Appendix B", "Appendix C", etc. Each such appendix shall be attached to and become a part of this contract.

1. *Resources.* a. The resources specified in any of the attached appendixes may be added to or terminated by written amendment to this contract. The amendment will be prepared by the VA Contracting Officer and, prior to becoming effective, shall be approved by the VA Chief Medical Director or his designee and the Contracting Officer of the _____².

b. The resources specified in the appendixes to this contract shall be furnished by the VA, subject to the limitations in paragraph 6 hereof, and the _____² when requested by means of an individual written request which has been authorized by _____³ or their authorized designees.

2. *Period covered.* This contract when accepted by the Contractor and the VA Contracting Officer shall be effective from _____⁴ through _____⁴.

3. *Termination.* This contract will remain in force during the period stated unless terminated at the request of either party after thirty (30) days' notice in writing. To the extent that this contract is so terminated, each party will be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

4. *Payment.* a. Each party hereto agrees to reimburse the other on a unit basis for resources furnished at the prices listed in the appendixes to this contract.

b. Payment of sums due each party will be paid _____⁵ upon submission and receipt of properly prepared invoice by the _____² or a Standard Form 1114 by the VA.

c. Billings rendered by the _____² to the VA for services furnished a VA beneficiary under the terms of this contract shall be billings in full. Neither the beneficiary, his insurer nor any other third party shall be billed.

d. Net payment procedures, when approved by both Contracting Officers, may be used. Under this arrangement, payment

will be made by either party to this contract only for the net difference between the amount due for resources furnished and resources received, i.e., if either party receives resources which require payment in excess of the amount of reimbursement due from the other party only the net difference will be paid. Itemized billings will be submitted by each party for resources furnished.

5. *Qualifications.* The physicians furnished by the parties to this contract must be licensed to practice in a State, Territory, or Commonwealth of the United States or the District of Columbia.

6. *Use of VA facilities.* To preclude the possibility of denying or delaying the care and treatment of an eligible veteran, VA facilities will be shared only to the extent that there will be no reduction in the service to the veteran.

7. *Exchange of data.* Clinical or other medical records pertaining to the patients shall be exchanged.

8. *Officials not to benefit.* No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

9. *Equal opportunity.* a. Each party to this contract agrees to furnish the resources specified in the appendixes hereto without regard to the race, color, religion, sex or national origin of the person for whom such resources are ordered.

NOTE: When it is determined by the VA Contracting Officer that the funds to be expended by the VA under this contract will exceed \$10,000, the following clauses shall be included in the contract:

b. VA Form 07-2135, Equal Opportunity Clause for Government Contracts, is attached to and made a part of this contract.

c. Certification of Nonsegregated Facilities.

The Contracting Officer of the _____² certifies that the _____² does not and will not maintain or provide for their employees at any of their establishments, facilities which are segregated on the basis of race, color, religion or national origin. The term "segregated facilities" as used herein means those facilities specified in 41 CFR 1-12.803-10(d)(1).

NOTE: When it is determined by the VA Contracting Officer that the funds to be expended by the VA under this contract will exceed \$50,000 and that the _____² has in its employ 50 or more employees, the

² Enter the name of the Hospital, University Medical School or Medical Installation.

³ Enter the title of the Authorizing Official of each party to the contract.

⁴ Enter the beginning and ending dates.

⁵ Enter frequency, i.e., monthly, quarterly, etc.

² Enter the name of the Hospital, University Medical School or Medical Installation.

following clause shall be included in the contract.

d. Affirmative Action Compliance Program.

(1) The _____² shall develop and maintain, within 120 days after the award of this contract, a separate written affirmative action compliance program for each of its establishments. The _____² shall require each Subcontractor having 50 or more employees to whom a subcontract, amounting to \$50,000 or more, is awarded to develop and maintain within 120 days after the award of such subcontract, a separate written affirmative action compliance program for each of the Subcontractor's establishments.

(2) Each affirmative action program shall be developed in conformity with the Rules and Regulations of the Office of Federal Contract Compliance, U.S. Department of Labor (Title 41, Part 60-2, Chapter 60, Code of Federal Regulations). Each program shall be maintained at the local office responsible for personnel matters of the particular establishment and shall be made available for inspection by representatives of the Office of Federal Contract Compliance, or such agency as may be designated as the Compliance Agency, upon request.

(3) The offeror certifies by completing whichever of the following is appropriate that he regularly employs:

(i) ☐ Less than 50 employees.
 (ii) ☐ 50 or more employees and maintains a written affirmative action program for each of his establishments in accordance with Title 41, Part 60-2, Chapter 60 of the Code of Federal Regulations.

(iii) ☐ 50 or more employees and agrees to develop, within 120 days after award of this contract, a written affirmative action program for each of his establishments in accordance with Title 41, Part 60-2, Chapter 60 of the Code of Federal Regulations.

10. *Disputes.* a. In the event a dispute concerning a question of fact arises under this contract, which cannot be resolved by mutual agreement between the respective Contracting Officers, the _____² agrees to abide by the following procedures.

(1) The appropriate Contracting Officer shall render a decision in the disputed matter. The decision will be identified as a final decision, be in writing, and include a statement of facts in sufficient detail to enable the opposite Contracting Officer to fully understand the decision and the basis on which it was made. It will be in the form of a statement of the claim or other description of the dispute with necessary references to the pertinent contract provisions. It will set forth those facts relevant to the dispute with which the Contracting Officers are in agreement and, as clearly as possible, the area of disagreement. It shall also contain the following:

"The Veterans Administration Contract Appeals Board (VACAB) is the authorized representative of the Administrator for hearing and determining such disputes. The rules of the VACAB are published in § 1.774, Title 38, Code of Federal Regulations."

(2) The decision of the Contracting Officer shall be final and conclusive unless, within 30 days after the receipt of a final decision, the Contracting Officer to whom the decision was rendered mails or otherwise furnishes to the rendering Contracting Officer a written appeal from the decision. The written appeal shall be addressed to the Administrator of Veterans Affairs.

(3) The decision of the VACAB with respect to the disputed matter shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

b. Pending final decision of a dispute hereunder, the parties shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

c. This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph a(1) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

11. *Contingent fee.* The Contracting Officers warrant that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the parties for the purpose of acquiring business. For breach or violation of this warranty, the parties shall have the right to annul this agreement without liability, or, in its discretion, to deduct from the agreed price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

12. *Examination of records.* The following clause shall be included in all contracts in which the cost to the VA will exceed \$2,500:

EXAMINATION OF RECORDS

The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever ex-

pires earlier, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this contract.

13. *Authority.* This contract is entered into under the authority of 38 U.S.C. 5053 and is negotiated under the authority of § 1-3.204 of the Federal Procurement Regulations.

Approved and accepted for

By _____

(Title) (Date)

Approved and accepted for
Veterans Administration

By _____

(Title) (Date)

§ 8-16.9503-1 Use of appendixes in exchange of use of specialized medical resources contracts.

a. The initial resources and the cost of each such resource will be listed in the

format illustrated in § 8-16.9503-2, designated "Appendix A" and made a part of the contract. Each succeeding listing which either adds to or deletes from this listing will be covered by a contract amendment and will be designated as "Appendix B", "Appendix C", etc.

b. In negotiating the cost to be paid by each party to the contract for each resource furnished, contracting officers will be guided by the provisions of 38 U.S.C. 5053(b) which states in part:

"Arrangements entered into under this section shall provide for reciprocal reimbursement based on a charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment."

c. The factors involved and the formula for arriving at such costs are set forth in Manuals M-1, Part I, and DM&S Supplement, MP-4, Part V.¹

[35 FR 17252, Nov. 10, 1970, as amended at 36 FR 8953, May 15, 1971]

§ 8-16.9503-2 Format for appendixes to exchange of use of specialized medical resources contracts.

EXCHANGE OF USE OF SPECIALIZED MEDICAL RESOURCES BETWEEN THE VETERANS ADMINISTRATION HOSPITAL, WASHINGTON, D.C. AND THE WASHINGTON HOSPITAL CENTER, WASHINGTON, D.C.

RESOURCES TO BE FURNISHED BY THE WASHINGTON HOSPITAL CENTER

Resource	Estimated quantity	Cost
1. Maintenance Hemodialysis. Treatments for end-stage renal failure consisting of one or more weekly dialysis as indicated.	10 patients per month.....	Per patient per treatment. ¹
2. Special Laboratory Procedures. Complex tests required to thoroughly evaluate VA patients with suspected or proven Endocrine Disease. To include, but not be limited to the following: 17-hydroxycorticosteroids (Porter-Silber). 17-ketosteroids. Aldosterone. Pregnanedial. Pregnanetriol. Estrogens (total estrogens and one dial and trial). Gonadotropins, total.	30 procedures per month.....	Per patient per procedure. ¹
Blood: 17-hydroxycorticosteroids (Porter-Silber). Cortisone. Testosterone. Aldosterone. Progesterone.		
3. Radiation Therapy a. Deep radiation therapy including cobalt and cesium	12 patients per month.....	Per patient per treatment. ¹

¹ Available in any Veterans Administration station.

EXCHANGE OF USE OF SPECIALIZED MEDICAL RESOURCES BETWEEN THE VETERANS ADMINISTRATION HOSPITAL, WASHINGTON, D.C. AND THE WASHINGTON HOSPITAL CENTER, WASHINGTON, D.C.—Continued

RESOURCES TO BE FURNISHED BY THE WASHINGTON HOSPITAL CENTER

Resource	Estimated quantity	Cost
b. Surface therapy including..... (1) interstitial bore, (2) intracavitary radiation, and (3) categories, which include gold seeds, radium seeds, applicators, etc., each per treatment program.	do.....	Do.

RESOURCES TO BE FURNISHED BY VA HOSPITAL, WASHINGTON, D.C.

Resource	Estimated quantity	Cost
1. Cardiac Catheterization. To include (1) the recording of intravascular pressures, (2) the measurement of oxygen content and saturation of blood samples taken from the chambers of the heart, (3) the measurement of cardiac output by the Fick principle, (4) the recording of indicator dilution curves, and (5) selective angiocardiographic studies. (a) With large angio film (b) Without large angio film	5 patients per month..... do.....	Per patient per procedure. ¹ Do. ¹
2. Special Laboratory Procedure. Thyroxine in blood by displacement (Murphy-Pattec Method) and resin sponge uptake of T3. This is an isotope procedure available in the VA radioisotope laboratory.	20 patients per month.....	Do. ¹
3. Esophageal Motility Procedures. The VA Hospital has a well-staffed and equipped laboratory for the study of pressures in the pharynx and esophagus and the response of these organs to swallowing. Tests are very helpful in patients complaining of dysphagia, substernal pain and heartburn related to gastric reflux. It is useful in evaluation, preoperatively as well as postoperatively, in patients with hiatal hernia. Its importance to both veteran and nonveteran patients is enormous when related to the fact that it is helpful in the diagnosis of a variety of patients with problems in such fields as gastroenterology, cardiology, rheumatology and dermatology. Each procedure includes physician interpretation, technician and supplies.	15 patients per month.....	Do. ¹

¹ Enter cost which has been negotiated.

[36 FR 8953, May 15, 1971]

§ 8-16.9503-3 Mutual use of specialized medical resources provided to a VA hospital.

The _____¹ (hereinafter called the Contractor) agrees, in accordance with the terms and conditions of this contract, to permit the VA Hospital, _____² (hereinafter called the VA) to utilize the specialized medical resources of the Contractor as specified in the appendixes attached to and made a part of this contract. The initial listing of resources shall be identified as "Appendix A" and

¹ Enter name and complete address of Hospital, University Medical School, or Medical installation.

² Enter address of VA Hospital.

each succeeding appendix as "Appendix B," "Appendix C," etc.

1. *Resources.* a. The resources specified in any of the attached appendixes may be added to or terminated by written amendment to this contract. The amendment will be prepared by the VA Contracting Officer and, prior to becoming effective, shall be approved by the VA Chief Medical Director or his designee and the Contracting Officer of the Contractor.

b. The resources specified in the appendixes to this contract shall be furnished to the VA by the Contractor when requested by means of an individual written request which has been authorized by _____³ or his (their) authorized designee(s).

³ Enter name(s) of authorizing official(s).

2. *Period covered.* This contract when accepted by the Contractor and the VA Contracting Officer shall be effective from _____⁴ through _____⁴

3. *Termination.* This contract will remain in force during the period stated unless terminated at the request of either party after thirty (30) days' notice in writing. To the extent that this contract is so terminated, the VA will be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

4. *Payment.* a. The VA agrees to reimburse the Contractor on a unit basis for resources furnished at the prices listed in the appendixes to this contract.

b. Sums due the Contractor will be paid _____⁵ upon receipt of a properly prepared invoice submitted by the Contractor.

c. Bills rendered by the Contractor to the VA for services furnished a VA beneficiary under the terms of this contract shall be in full. Neither the beneficiary, his insurer nor any other third party shall be billed.

5. *Qualifications.* The physicians furnishing services under this contract must be licensed to practice in a State, Territory, or Commonwealth of the United States or the District of Columbia.

6. *Medical records.* Clinical or other medical records of VA beneficiaries treated by the Contractor will be forwarded to the VA.

7. *Officials not to benefit.* No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. *Equal opportunity.* a. The Contractor agrees to furnish the resources specified in the appendixes hereto without regard to the race, color, religion, sex, or national origin of the VA beneficiary.

NOTE: When it is determined by the VA Contracting Officer that the funds to be expended under this contract will exceed \$10,000, the following clauses shall be included in the contract.

b. VA Form 07-2135, Equal Opportunity Clause for Government Contracts, is attached to and made a part of this contract.

c. Certification of Nonsegregated Facilities.

The Contractor certifies that he does not, and will not maintain or provide for his employees at any of his establishments, facilities which are segregated on the basis of race, color, religion, or national origin. The term "segregated facilities" as used herein means those facilities specified in 41 CFR 1-12.803-10(d)(1).

⁴ Enter beginning and ending dates.

⁵ Enter frequency, i.e., monthly, quarterly,

NOTE: When it is determined by the VA Contracting Officer that the funds to be expended by the VA under this contract will exceed \$50,000 and that the Contractor has in his employ 50 or more employees, the following clause shall be included in the contract.

d. Affirmative Action Compliance Program.

(1) The Contractor shall develop and maintain, within 120 days after award of this contract, a separate written affirmative action compliance program for each of his establishments. He shall require each Subcontractor having 50 or more employees to whom a subcontract, amounting to \$50,000 or more, is awarded to develop and maintain, within 120 days after the award of such subcontract, a separate written affirmative action compliance program for each of the Subcontractor's establishments.

(2) Each affirmative action program shall be developed in conformity with the rules and regulations of the Office of Federal Contract Compliance, U.S. Department of Labor (Title 41, Part 60-2, Chapter 60, Code of Federal Regulations). Each program shall be maintained at the local office responsible for personnel matters of the particular establishment and shall be made available for inspection by representatives of the Office of Federal Contract Compliance, or such agency as may be designated as the Compliance Agency, upon request.

(3) The offeror certifies by completing whichever of the following is appropriate that he regularly employs:

(i) ☐ Less than 50 employees.

(ii) ☐ 50 or more employees and maintains a written affirmative action program for each of his establishments in accordance with Title 41, Part 60-2, Chapter 60 of the Code of Federal Regulations.

(iii) ☐ 50 or more employees and agrees to develop, within 120 days after award of this contract, a written affirmative action program for each of his establishments in accordance with Title 41, Part 60-2, Chapter 60 of the Code of Federal Regulations.

9. *Disputes.* a. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the VA Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Administrator of Veterans Affairs. The decision of the Administrator, or his duly authorized representative for the determination of such appeal, shall be final

and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

b. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph a above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

10. *Contingent fee*. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

11. *Contractor represents*. The Contractor represents that he ☐ has, ☐ has not, participated in a previous contract or subcontract subject to the Equal Opportunity Clause herein and Executive Order No. 11246, dated September 24, 1965; and he ☐ has, ☐ has not, filed all required compliance reports; and that the representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards.

12. *Examination of records*. The following clause shall be included in all contracts in which the cost to the VA will exceed \$2,500.

EXAMINATION OF RECORDS

The Contractor agrees that the Comptroller General of the United States or any of

his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR, Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

13. *Authority*. This contract is entered into under the authority of 38 U.S.C. 5053(a)(1) and is negotiated under the authority of § 1-3.204 of the Federal Procurement Regulations.

Approved and accepted for:

By _____
(Title) (Date)

Approved and accepted for Veterans Administration:

By _____
(Title) (Date)

[36 FR 8954, May 15, 1971]

§ 8-16.9503-4 Use of appendixes in contracts for mutual use of specialized medical resources provided to a VA hospital.

a. The initial services and the cost of such services to be rendered by the Contractor will be listed in the format illustrated in § 8-16.9503-5, designated "Appendix A" and made a part of the contract. Each succeeding listing which either adds to or deletes from the initial or subsequent listings will be designated "Appendix B," "Appendix C," etc.

b. In negotiating the cost to be paid by the VA for each resource of the Contractor that is utilized, Contracting Officers will assure themselves that the prices charged are equitable and just and not in excess of those charged in the community for similar or equal services.

[36 FR 8954, May 15, 1971]

§ 8-16.9503-5 Format for appendixes for contracts for mutual use of specialized medical resources provided to a VA hospital.

MUTUAL USE OF SPECIALIZED MEDICAL RESOURCES PROVIDED TO THE VA HOSPITAL,
WASHINGTON, D.C. BY THE GEORGE WASHINGTON UNIVERSITY HOSPITAL, WASHINGTON, D.C.

Resource	Estimated quantity	Cost
1. Maintenance Hemodialysis. Treatments for end-stage renal failure consisting of one or more weekly dialysis as indicated.	30 patients per month.....	Per patient per treatment. ¹
2. Radiation Therapy		
a. Deep radiation therapy including cobalt and cesium	20 patients per month.....	Do.
b. Surface therapy including (1) interstitial bore, (2) intracavitary radiation, and (3) categories, which include gold seeds, radium seeds, applicators, etc., each per treatment program.	do.....	Do.

¹ Enter cost which has been negotiated.

[36 FR 8955, May 15, 1971]

§ 8-16.9504 Mutual use of specialized medical resources provided by a VA hospital.

The Veterans Administration Hospital _____¹ (hereinafter called the VA) agrees, in accordance with the terms and conditions stated herein, to permit the _____² (hereinafter called the Contractor) to utilize the specialized medical resources listed in the appendixes to this contract at the prices specified therein. The initial listing of resources available to the Contractor shall be designated "Appendix A" and each succeeding appendix which either adds to or deletes from the resources available to the Contractor shall be designated as "Appendix B", "Appendix C", etc. Each appendix shall be attached to and become a part of this contract.

1. *Resources.* a. The resources listed in any of the attached appendixes may be added to or terminated by written amendment to this contract. The amendment will be prepared by the VA Contracting Officer and, prior to becoming effective, shall be approved by the Chief Medical Director or his authorized designee.

b. The resources specified in the appendixes to this contract shall be made available to the Contractor subject to the limitations in paragraph 5 hereof when requested by means of an individual written request, which has been authorized by _____³ or his authorized designee.

2. *Period covered.* This contract when accepted by the Contractor and the VA Contracting Officer shall be effective from _____⁴ through _____⁴.

3. *Termination.* This contract will remain in force for the period stated herein unless terminated at the request of either party

after thirty (30) days' notice in writing. If this contract is so terminated the Contractor shall be liable only for payment for the resources he has used from the date of last service for which he has been billed by the VA, through the effective date of such termination.

4. *Payment.* Payment of sums due the VA will be paid _____⁵ by the Contractor on submission of a properly prepared Standard Form 1114 by the VA.

5. *Use of VA resources.* To preclude the possibility of denying or delaying the care and treatment of an eligible veteran, VA resources will be used by the Contractor only to the extent that there will be no reduction in service to a veteran.

6. *Exchange of data.* Clinical or other medical records pertaining to the patients shall be exchanged.

7. *Disputes.* Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by mutual agreement shall be decided by the VA Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish such decision to the Contractor. The decision of the VA Contracting Officer shall be final and conclusive unless, within 30 days from the receipt of such decision, the Contractor furnishes to the VA Contracting Officer a written appeal addressed to the Administrator of Veterans Affairs. The decision of the Administrator or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

¹ Enter the address of the VA Hospital.

² Enter the Hospital, University Medical School or Clinic whichever is appropriate.

³ Enter title of the authorized official.

⁴ Enter beginning and ending dates.

⁵ Enter frequency, i.e., monthly, quarterly, etc.

b. This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph a above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representatives, or board on a question of law.

c. The representative of the Administrator of Veterans Affairs to render decisions, in disputes arising under this clause, is the Veterans Administration Contract Appeals Board.

8. *Equal opportunity*. The resources of the VA covered by this contract shall be made available to the Contractor without regard to the race, color, religion, sex, or national origin of the Contractor's patients.

9. *Authority*. This contract is entered into under the authority of 38 U.S.C. 5053 and is negotiated under the authority of FPR 1-3.204.

Approved and accepted for
By _____

(Title) (Date)
Approved and accepted for Veterans Administration
By _____

(Title) (Date)
[35 FR 17252, Nov. 10, 1970, as amended at 36 FR 8955, May 15, 1971]

§ 8-16.9504-1 Use of appendixes in contracts for mutual use of specialized medical resources provided by a VA hospital.

a. The initial resources available for use by the Contractor and the cost of each such resource will be listed in the format illustrated in § 8-16.9504-2, designated "Appendix A" and made a part of the contract. Each succeeding listing which either adds to or deletes from this listing will be covered by a contract amendment and will be designated as "Appendix B", "Appendix C", etc.

b. In negotiating the cost to be paid by the Contractor for the use of these resources, Contracting Officers will be guided by the provisions of 38 U.S.C. 5053(b) and the factors involved and formula for arriving at such costs as set forth in § 8-16.9503-1.

[35 FR 17252, Nov. 10, 1970, as amended at 36 FR 8955, May 15, 1971]

§ 8-16.9504-2 Format for appendixes for contracts for mutual use of specialized medical resources provided by a VA hospital.

MUTUAL USE OF SPECIALIZED MEDICAL RESOURCES BY THE VETERANS ADMINISTRATION HOSPITAL, WASHINGTON, D.C., AND WASHINGTON HOSPITAL CENTER, WASHINGTON, D.C.

Resource	Cost
1. Electroencephalograph tracing	(¹)
2. Analyze and give results on:	
a. Brain Scan with TC99m	(¹)
b. Thyroid uptake and Scan with 131I	(¹)
c. Trisorb 125-T3	(¹)
d. Blood Volumes with 131 RISA and 51 Cr	(¹)

¹Enter the cost which has been negotiated for each resource.

[35 FR 17252, Nov. 10, 1970, as amended at 36 FR 8955, May 15, 1971]

PART 8-18—PROCUREMENT OF CONSTRUCTION

Subpart 8-18.1—General Provisions

- Sec.
8-18.104 Subcontracting.
8-18.110 Liquidated damages.
8-18.111 Concurrent firm fixed-price and cost-type construction contracts.
8-18.112 Construction contracts with design architect-engineers.

Subpart 8-18.2—Formal Advertising

- 8-18.202 Preinvitation notices.
8-18.203 Invitations for bids.
8-18.203-2 Distribution of invitations for bids.
8-18.203-3 Amendment of invitations for bids.

Subpart 8-18.6—Buy American Act

- 8-18.602 Buy American policy.
8-18.602-1 General.
8-18.603 Unreasonable cost determination.
8-18.603-3 Deviations by agency head.
8-18.604 Invitation provision.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(C); sec. 210(C), 72 Stat. 1114; 38 U.S.C. 210(c).

SOURCE: 34 FR 6732, Apr. 22, 1969, unless otherwise noted.

Subpart 8-18.1—General Provisions

§ 8-18.104 Subcontracting.

The clause contained in § 8-7.650-3, Work To Be Executed by Contractor's Forces, will be used in lieu of the clause in FPR 1-18.104.

§ 8-18.110 Liquidated damages.

Liquidated damages provisions may be included in construction contracts when the criteria of § 8-1.315-2 is met. If partial performance may be accepted and utilized to the advantage of the Government, the clause substantially as set forth in § 8-1.315-3(c) will be included in addition to the clause set forth in FPR 1-18.110.

§ 8-18.111 Concurrent firm fixed-price and cost-type construction contracts.

When concurrent contracts of the type specified in FPR 1-18.111 are considered necessary or advantageous, prior approval will be requested of the Chief Medical Director for contracts involving M&R (Maintenance and Repair) funds or of the Assistant Administrator for Construction for contracts involving C of H&DF (Construction of Hospital and Domiciliary Facilities) funds. Complete justification will be furnished in the request.

§ 8-18.112 Construction contracts with design architect-engineers.

When it is considered necessary or advantageous to award a contract for construction of a project to a firm or person that designed the project, prior approval will be requested of the Chief Medical Director for contracts involving M&R funds or of the Assistant Administrator for Construction for contracts involving C of H&DF funds. Complete justification will be furnished in the request.

Subpart 8-18.2—Formal Advertising

§ 8-18.202 Preinvitation notices.

An SF 19, Invitation, Bid and Award (Construction, Alteration, or Repair), or SF 20, Invitation for Bids (Construction Contract), modified as necessary to include the information required by § 1-18.202, may be used as a preinvitation notice. When so used, it

will be submitted to prospective bidders at least 14 days prior to the date on which the drawings and specifications will be issued. When preinvitation notices are not used, see § 8-18.203-2.

[39 FR 17103, May 13, 1974, as amended at 45 FR 14045, Mar. 4, 1980]

§ 8-18.203 Invitations for bids.

§ 8-18.203-2 Distribution of invitations for bids.

(a) On the issue date shown on SF 19 or SF 20, specifications, drawings, and all other material necessary to prepare a bid will be issued to each eligible prospective bidder and other agencies who request them in writing and who meet the qualifications stated in the invitation.

(b) On the issue date, two copies of the drawings and specifications for station level projects funded from construction appropriations will be furnished to the Assistant Administrator for Construction.

(c) Distribution of specifications and drawings on Central Office projects will be in accordance with that established by the Project Director.

(d) Invitations should also be sent to Chambers of Commerce, Builders Exchanges, various trade journals, and other organizations which make a practice of publishing such information for the benefit of the construction industry.

[39 FR 17103, May 13, 1974]

§ 8-18.203-3 Amendment of invitations for bids.

Amendments will be sent to holders of drawings and specifications by certified mail, return receipt requested.

[39 FR 17104, May 14, 1974]

Subpart 8-18.6—Buy American Act

§ 8-18.602 Buy American policy.

§ 8-18.602-1 General.

(a) Pursuant to the "Buy American Act" (41 U.S.C. 10a-10d), the Assistant Administrator for Construction has determined that the articles, materials and supplies listed in this section may

be used in Veterans Administration construction without regard to source, except as provided for in Subpart 8-6.53.

Acetylene, black.
Antimony, as metal or oxide.
Asbestos, amosite.
Bismuth.
Cadmium, ores and flue dust.
Chalk, English.
Chrome ore or chromite.
Cobalt in cathodes, rondelles, or other primary forms.
Cork, wood, or bark and waste.
Dammar gum.
Fiber, coir, abaca, and agave.
Flax.
Graphite, natural, crystalline, crucible grade.
Hemp.
Jute and jute burlaps.
Kauri gum.
Lac.
Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, greenheart lignum vitae, mahogany, and teak.
Manganese.
Mica.
Nickel, primary in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (picrite).
Rubber, crude and latex.
Shellac.
Sisal.
Tin, in bars, blocks, and pigs.
Tungsten.
Wax, carnauba.

(b) If articles, materials and supplies required for a particular procurement are not excepted in paragraph (a) of this section, or when only foreign bids or offers are received, the determination concerning nonavailability required by FPR 1-18.602-1(b) will be made by the contracting officer, factually supported in writing, and included in the contract file.

(c) A copy of the determination will be forwarded to the Assistant Administrator for Construction. When appropriate, the item will be added to the list of excepted articles, materials and supplies contained in paragraph (a) of this section.

§ 8-18.603 Unreasonable cost determination.

§ 8-18.603-3 Deviations by agency head.

When a contracting officer believes that the requirement of the "Buy

American Act," is impractical as provided in FPR 1-18.602-1(a), or that it would be advantageous to the Government to deviate from the provisions of FPR 1-18.603-1, authority to consummate the contract will be requested. The request containing all the facts, including a comparison of all the bids or offers received and any other pertinent information upon which a determination may be made, will be submitted through channels to the Assistant Administrator for Construction for approval by the Administrator. Administrator. If approved, a report of the transaction will be prepared and transmitted by the Assistant Administrator for Construction in accordance with Executive Order 10582, dated December 17, 1954, as amended.

§ 8-18.604 Invitation provision.

The provision required by FPR 1-18.604 shall be included in invitations for bids and requests for proposals for affected construction work estimated to exceed \$10,000. The list of excepted items contained in § 8-18.602-1 will be incorporated in this provision.

PART 8-19—TRANSPORTATION

Subpart 8-19.2—Transportation Factors in the Procurement of Personal Property

Sec.

- 8-19.202-7 Use of appropriate delivery terms.
- 8-19.202-50 Potential destinations known but quantities unknown.
- 8-19.203 Transportation factors in evaluation of bids.
- 8-19.203-3 Lowest overall transportation costs.

Subpart 8-19.3—Contract Delivery Terms

- 8-19.302 F.o.b. origin.
- 8-19.303 F.o.b. origin, contractor's facility.
- 8-19.350 F.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

Subpart 8-19.2—Transportation Factors in the Procurement of Personal Property

SOURCE: 31 FR 745, Jan 20, 1966, unless otherwise noted.

§ 8-19.202-7 Use of appropriate delivery terms.

Where alternative delivery terms are appropriate but the Contracting Officer elects to use only one in the invitation for bids, or request for proposals, he shall document the contract file to show his reasons for so doing.

§ 8-19.202-50 Potential destinations known but quantities unknown

When it is known that the items to be procured are of the type anticipated for use by all Veterans Administration installations in proportion to the number of hospital beds or patient workload, but specific quantities that may be required by each hospital cannot be predetermined, the following clause shall be incorporated in the invitation for bids and the resultant contract:

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nation-wide average transportation charge to the f.o.b. origin bid prices. The nation-wide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nation-wide average transportation charge.

Area destination	Anticipated demand factor
Oakland, Calif.....	3
Dallas, Tex.....	2
Omaha, Nebr.....	3
Fort Wayne, Ind.....	4
Atlanta, Ga.....	3
New York, N.Y.....	5
Total of factors.....	20

§ 8-19.203 Transportation factors in evaluation of bids.**§ 8-19.203-3 Lowest overall transportation costs.**

Prospective bidders or offerors will be informed in the solicitation that when bids or proposals are solicited on:

(a) An f.o.b. origin basis only, the bids or offers will be evaluated in accordance with FPR 1-19.203-3;

(b) Either f.o.b. origin or f.o.b. destination basis, the f.o.b. origin bid or offer will be evaluated on the basis of the shipping rates in effect on the date solicitation was issued.

[34 FR 18801, Nov. 25, 1969]

Subpart 8-19.3—Contract Delivery Terms**§ 8-19.302 F.o.b. origin.**

(a) Normally shipments falling within this category will be shipped on a Government bill of lading. If, however, it is determined that parcel post is the most advantageous method of transporting purchases of this kind, a preaddressed mail indicia label, VA Form 07-3017a, will be attached to the purchase order together with a preaddressed Certificate of Mailing, Postal Service Form 3817. This latter form which is available from your local postmaster will, prior to mailing to the vendor, be modified as follows:

Delete "Postage and postmark"
Insert, by means of a rubber stamp—
"Postage and Fees Paid"
"Veterans Administration"
"VA-601"

The number of VA Forms 07-3017a and estimated postage will be furnished the station mail activity.

(b) The vendor will be instructed to forward the merchandise by parcel post utilizing VA Form 07-3017a as an address label and postage. He/she will also be instructed to have Postal Service Form 3817 receipted by the sending post office and returned to the contracting officer as evidence that shipment was mailed. Orders issued on VA Form 07-2138. Orders for Supplies or Services, will direct the vendor's at-

tention to Shipping Instruction No. 2 on the reverse of the form.

(c) Shipment of flat bronze markers by the vendor, as directed by the Director, National Cemetery System, or his/her designee, will be made by parcel post. VA Form 40-4951, Order for Flat Bronze Marker, will be used for this purpose.

[39 FR 26723, July 23, 1974, as amended at 40 FR 2545, June 16, 1975; 41 FR 21778, May 28, 1976]

§ 8-19.303 F.o.b. origin, contractor's facility.

Shipments falling within this category will be handled in the same manner as provided in § 8-19.302.

[34 FR 15754, Oct. 11, 1969]

§ 8-19.350 F.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice.

(a) When it has been carefully determined that an f.o.b. origin purchase or delivery order will have transportation charges not in excess of \$100, the delivery terms will be stated as "f.o.b. origin, transportation prepaid, with transportation charges to be included on the invoice."

(b) Orders issued on VA Form 07-2138 will direct the vendor's attention to Shipping Instructions No. 1 on the reverse of the form. When VA Form 07-2138 is not used, the vendor will be instructed as follows:

(1) Consistent with the terms of the contract, pack, mark and prepare shipment in conformance with carrier requirements to protect the personal property and assure assessment of the lowest applicable transportation charge.

(2) Add transportation charges as a separate item on your invoice. Insurance charges will not be paid unless the order specifically requires that the shipment be insured. If shipment is made by other than parcel post, the invoice must bear the following certification: "The invoiced transportation charges have been paid and evidence of such payment will be furnished upon the Government's request."

(3) Do not prepay transportation charges on this order if such charges will exceed \$100. Ship collect and an-

notate the commercial bill of lading or express receipt, "To be converted to Government Bill of Lading." These instructions do not apply if the order in question is placed against a Federal Supply Schedule contract that authorizes prepayment of transportation charges regardless of cost.

(c) Each contracting officer is responsible for:

(1) Making a diligent effort to obtain the most accurate estimate possible of transportation charges; and

(2) Utilizing the authority in paragraph (a) of this section only when to the best of his/her knowledge the transportation charges will not exceed \$100.

(d) When in accordance with FPR 1-10.3 and 1-19.1 it is determined that a shipment is to be insured, the vendor will be specifically instructed to do so on the order, when a written order is used. If the order is an oral order, all copies of the purchase request will be annotated to show that insurance was specifically requested.

[34 FR 18801, Nov. 25, 1969, as amended at 40 FR 25451, June 16, 1975. Redesignated and amended at 41 FR 21778, May 28, 1976]

PART 8-26—CONTRACT MODIFICATIONS

Subpart 8-26.4—Novation and Change of Name Agreements

Sec.

8-26.402 Agreement to recognize a successor interest.

8-26.404 Processing novation and change of name agreements.

AUTHORITY: 72 Stat. 1114, sec. 205(c), 63 Stat. 390; (38 U.S.C. 210, 40 U.S.C. 486(c)).

Subpart 8-26.4—Novation and Change of Name Agreements

§ 8-26.402 Agreement to recognize a successor in interest.

When the contracting officer determines it is not in the best interest of the Government to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract with that company may be

terminated for reasons of default, should the original contractor refuse or fail to perform.

[40 FR 25451, June 16, 1975]

§ 8-26.404 Processing novation and change of name agreements.

Prior to execution of the agreement, the contracting officer will forward the agreement and related documents to the Office of General Counsel for review as to legal sufficiency. The documents will be submitted through the same channels as those prescribed for legal review of contracts in § 8-1.403-52.

[39 FR 38379, Oct. 31, 1974]

PART 8-30—CONTRACT FINANCING

Subpart 8-30.4—Advance Payments

Sec.

8-30.403 Interest.

8-30.404 Standards—amounts—need.

8-30.405 Statutory requirements.

8-30.450 Other authorized advance payments.

Subpart 8-30.5—Progress Payments Based on Costs

8-30.505 Unusual progress payments—standards—procedure.

Subpart 8-30.7—Assignment of Claims

8-30.706 Procedures upon receipt of notice of assignment and instrument of assignment.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

SOURCE: 30 FR 4677, Apr. 10, 1965, unless otherwise noted.

Subpart 8-30.4—Advance Payments

§ 8-30.403 Interest.

Except as provided in FPR 1-30.403, interest at the rate of 5 per centum per annum will be charged on the unliquidated balance on all advance payments.

§ 8-30.404 Standards—amounts—need.

Contracting Officers will require that contractors requesting advance payments submit evidence that all

other forms of contract financing are not available.

§ 8-30.405 Statutory requirements.

The determination required by FPR 1-30.405(c) will be made by the Director, Supply Service, Department of Medicine and Surgery. Prior to award, Contracting Officers will submit, through channels, the information required by FPR 1-30.412 for such determinations.

§ 8-30.450 Other authorized advance payments.

(a) Under the provisions of 31 U.S.C. 530a, as amended, advance payment is authorized for subscriptions or other charges for newspapers, magazines, periodicals and other publications for official use of any office under the Government from appropriations available therefor, notwithstanding the provisions of 31 U.S.C. 529. The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual usage.

(b) Under the provisions of 31 U.S.C. 686, advance payment may be made for services and supplies obtained from another Government agency. This includes items such as coupons from the Government Printing Office and Operator Permits, Civilian Defense Radio System, from the Federal Communications Commission.

(c) Under the provisions of 5 U.S.C. 4109, advance payment may be made for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities. This includes the purchase or rental of books, materials and supplies or services directly related to the training of a Government employee.

[40 FR 25451, June 16, 1975]

Subpart 8-30.5—Progress Payments Based on Costs

§ 8-30.505 Unusual progress payments—standards—procedure.

Requests for unusual progress payments within the meaning of FPR 1-

30.505 will be forwarded through channels to the Director, Supply Service, Department of Medicine and Surgery, for approval. Such requests shall be accompanied by a full justification from the contractor together with the recommendations of the Contracting Officer.

Subpart 8-30.7—Assignment of Claims

§ 8-30.706 Procedures upon receipt of notice of assignment and instrument of assignment.

(a) The Contracting Officer will file the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the General Accounting Office copy of the contract.

(b) Contracting Officers will notify field stations of any recognized assignment of payments under contracts executed in Central Office or by the Marketing Divisions in all cases where payment for articles and services under such contracts are certified and approved for payment in the field.

PART 8-51—AUTHORITY AND RESPONSIBILITIES

Subpart 8-51.1—Responsibilities

§ 8-51.101 Responsibility of Contracting Officers.

Contracting Officers are responsible for:

(a) Knowing the scope and limitation of their authority.

(b) Their acts as Contracting Officers under laws and regulations.

(c) Insuring that their acts are in accordance with laws and within their prescribed authority.

(d) The execution, award and administration of contracts.

(e) The legal, technical and administrative sufficiency of the contracts they execute and award.

(f) Safeguarding the interests of the Government in contractual relationships.

(g) Determining facts under contracts.

(Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c))

[29 FR 7548, June 12, 1964]

PART 8-52—CONTRACT ADMINISTRATION

Subpart 8-52.1—Contract Administration

Sec.

8-52.101 Scope.

8-52.102 Definition.

8-52.104 Release statements.

8-52.105 Representatives of contracting officers.

8-52.106 Representatives of contracting officers; receipt of equipment supplies and nonpersonal services.

8-52.108 Contract provision.

8-52.109 Assistance—General Counsel.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

Subpart 8-52.1—Contract Administration

§ 8-52.101 Scope.

This subpart applies to all contracts, whether advertised or negotiated. (See § 8-1.403-52 for requirements for legal review of certain contract administration actions.)

[39 FR 38379, Oct. 31, 1974]

§ 8-52.102 Definition.

Contract Administration is the coordination of actions required for the performance of a contract including the guidance and supervision necessary to assure that all contractual obligations are fulfilled.

[29 FR 7548, June 12, 1964]

§ 8-52.104 Release statements.

(a) As a part of the final settlement of construction contracts incorporating SF 23A, General Provisions, a release of claims will be required. The release will be executed in substantially the following format:

RELEASE OF CLAIMS

For and in consideration of the payments heretofore made, and payment of the above recited sum now due by reason of performance of the above contract, the undersigned contractor hereby releases and discharges

the United States of America of and from all liabilities, obligations, and claims whatsoever under or arising out of said contract, except the following:

(a) Claims which are the subject of appeal, pending disposition by the Veterans Administration Contract Appeals Board.

(b) Unresolved matters as indicated in the above statement of account.

(c) Other specific claims: (List below. If none, so state.)

All other terms and conditions of the above-mentioned contract remain in full force and effect.

In witness whereof, this release has been duly executed this — day of ———, 19—, ———

(Contractor)

By: _____
Title: _____

(b) Any final release or other contractual instruments entered into as a result of a decision by a board of contract appeals, the head of an agency, or a contracting officer under a contract disputes clause shall contain a provision substantially as follows:

FINAL RELEASE STATEMENT

It is further understood and agreed by the Government and the contractor named hereon, that this release is executed subject to the standards prescribed in the Wunderlich Act (41 U.S.C. 321, 322). Therefore, this release shall neither deprive the Government nor the contractor of the right of further administrative and judicial review, if any of the decisions rendered pursuant to the disputes clause of this contract are later found not to meet the standards of the Wunderlich Act.

[38 FR 10006, Apr. 23, 1973, as amended at 41 FR 19318, May 12, 1976]

§ 8-52.105 Representatives of contracting officers.

(a) In carrying out the responsibilities of § 8-51.101, the contracting officer may designate another Government contracting officer, or other Government employees, or another contractor:

(1) To furnish technical guidance and advice or generally supervise the work performed under the contract. Such designations will be in writing and will define the scope and limitation of the representative's authority; and will be addressed to the designee with a copy to be forwarded to the

contractor except as indicated in § 8-52.106. Except as provided in paragraph (c) of this section representatives will not be authorized to make any commitments or changes which will affect the price, quantity, quality or delivery terms. (All changes to a contract must be authorized by a contracting officer acting within the scope of his/her authority.)

(2) To take actions authorized in the contract, such as issue delivery orders, reject unsatisfactory items, order replacement of such items (materials or services) and, when necessary, declare contractor in default on specific delivery orders. Except for blood, this authority will be delegated only to other Government contracting officers under centralized indefinite delivery type contracts and the contract will so state. Centralized contracts for blood will provide that contracting officers at ordering offices are authorized to designate representatives and alternate representatives to place delivery orders subject to the same restrictions stated in paragraph (a)(3) of this section.

(3) To place oral or other informal delivery orders for items such as, but not limited to, bread, milk, and blood against local indefinite delivery type contracts on which blanket purchase arrangements have been established and funds have been obligated. The designation of representatives and alternates will be in writing and will define the scope and limitations of the representative's authority, and will be addressed to the employee(s) with a copy to the contractor. Such designations will be made only by the prime contracting officer and are not redelegable.

(b) In the administration of research and development contracts, any representative appointed pursuant to this section must be acceptable both to the contracting officer and the department or staff head concerned.

(c) Contracting officers of the Office of Construction may authorize resident engineers assigned to that office to make individual contract changes within the following limits:

(1) Resident engineers in grade GS-14 may be authorized to make changes

not exceeding \$20,000 and 20 days of time extension.

(2) Resident engineers in grade GS-13 may be authorized to make changes not exceeding \$10,000 and 10 days of time extension.

[41 FR 19318, May 12, 1976]

§ 8-52.106 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, any contracting officer may, without prior notification to the contractor or vendor, designate the Chief, Storage and Distribution Section, or other competent personnel, to represent him/her in receiving and inspecting supplies, equipment and services at his/her station. Duties such as, but not limited to, the following will be performed by these designees:

(1) The inspection and certification as to compliance with the quality and quantity requirements of the purchase order or contract; and

(2) Inspection of supplies and equipment for condition and quantity and the acceptance of supplies, equipment, and services, based on quality inspection made by other authorized representatives.

(b) The Chief, Central Office Library Division, and the Chief, Library Service, at a field station, are designated the representatives of the contracting officer to receive, inspect and accept library books, newspapers, and periodicals. Purchase documents will specify that delivery will be made direct to the library.

(c) The Chief, Stock Control Division, VA Supply Depot, Hines, Ill., is hereby designated as the representative of each contracting officer and purchasing agent of the various marketing divisions of the VA Marketing Center, Hines, Ill., for the purpose of accepting, on behalf of the Veterans Administration, items purchased for stock. The Chief, Stock Control Division, may designate one or more employees of the Incoming Property Section, Supply Control Division, to represent him/her and authority is hereby delegated to such designees to accept such property on behalf of the Veterans Administration. Designations

will be confined to those employees to whom such responsibility has been assigned by their position descriptions. The Chief, Fiscal Services, will be furnished a list of such designees. Where inspection for compliance with specifications, purity, quality, or other element must be made by the Service and Reclamation Division or other testing agency, acceptance will be contingent upon receipt of a properly prepared inspection report.

(d) The Chiefs, Service and Reclamation Divisions, Veterans Administration Supply Depots at Hines, Ill., Somerville, N.J., and Bell, Calif., are hereby designated as the representatives of the contracting officers and purchasing agents of the various marketing divisions of the Veterans Administration Marketing Center, Hines, Ill., for the purpose of inspecting, when requested, supplies and equipment for compliance with technical, mechanical, operating, and other specifications. The results of such inspections will be forwarded to the Chief, Stock Control Division, Veterans Administration Supply Depot, Hines, Ill. 60141 when the item(s) involved is for stock and to the appropriate contracting officer or purchasing agent for all other items.

(e) The chief of each service and reclamation division may designate one or more employees of his/her division to represent him/her and authority is hereby delegated to such designees to perform the inspection functions set forth in paragraph (d) of this section. (Designations shall be in writing with a copy furnished to the Director, Veterans Administration Marketing Center, Hines, Ill. Designations will remain in effect unless revoked. The reassignment or termination of either the designee or the chief, service and reclamation division, issuing the designation will serve as an automatic rescission of the designation.)

[34 FR 15754, Oct. 11, 1969, as amended at 39 FR 38379, Oct. 31, 1974; 41 FR 19319, May 12, 1976; 43 FR 24532, June 6, 1978; 45 FR 13075, Feb. 28, 1980]

§ 8-52.108 Contract provision.

Whenever it is considered necessary to authorize a representative under

§ 8-52.105(b) (i.e., research and development, in process manufacturing), the clause incorporated in § 8-7.150-10 will be observed.

[43 FR 24532, June 6, 1978]

§ 8-52.109 Assistance—General Counsel.

(a) In the administration of a contract, many problems can and do arise that make the advice and assistance of the General Counsel either desirable or necessary. The final decision as to the action to be taken, however, must be made by the Contracting Officer in each instance. To reduce to the absolute minimum the possibility of litigation resulting from his/her decision, the Contracting Officer shall, except as provided in paragraphs (b) and (c) of this section, submit the problem through channels in sufficient detail to the General Counsel for advice or assistance.

(b) Default action may be taken without consulting the General Counsel when the contractor fails to deliver supplies or equipment, or to render the services required within the specific time, or fails to comply with the applicable specifications, unless the Contracting Office has reason to doubt that the default action is legal or proper.

(c) Contracts containing a mutual termination clause may be terminated without reference to the General Counsel.

[29 FR 12773, Sept. 10, 1964, as amended at 31 FR 7689, May 28, 1966; 39 FR 38379, Oct. 31, 1974]

PART 8-74—SPECIAL PROCUREMENT CONTROLS

Subpart 8-74.1—Special Procurement Controls

Sec.

- 8-74.112 Subsistence.
- 8-74.112-6 Frozen processed food products.
- 8-74.113 Telecommunications equipment.
- 8-74.114 Paid use of conference facilities.
- 8-74.115 Asbestos.
- 8-74.115-1 General.
- 8-74.115-2 Background.
- 8-74.115-3 Approving authority.
- 8-74.115-4 Exempted products containing asbestos.
- 8-74.116 Food service equipment.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

Subpart 8-74.1—Special Procurement Controls

§ 8-74.112 Subsistence.

[33 FR 17948, Dec. 4, 1968]

§ 8-74.112-6 Frozen processed food products.

(a) All frozen processed food products procured which contain meat, poultry or a significant proportion of eggs, will be processed or prepared in plants operated under the supervision of the USDA (U.S. Department of Agriculture). The product will be inspected and approved in accordance with the regulations of the USDA governing meat, poultry or egg inspection. A label or seal, affixed to the container, indicating compliance with these regulations will be accepted as evidence of compliance. The product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(b) All frozen processed food products procured, which contain fish or fish products, will be processed or prepared in plants operated under the supervision of the USDC (U.S. Department of Commerce). The products listed in USDC publication titled "Approved List of Sanitarily Inspected Fish Establishments" are processed in plants under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State and city sanitation and health regulations. Such brand label or USDC seal, affixed to a container, indicating compliance with USDC regulations will be accepted as evidence of compliance. In lieu thereof, the shipment may be lot inspected by the

USDC and containers stamped to indicate acceptance or a certification of inspection issued to accompany the shipment. The product must bear a label complying with the Federal Food, Drug, and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(c) Frozen bakery products procured will conform in every respect to the provisions of the Federal Food, Drug and Cosmetic Act. Plants shipping these products in interstate commerce are required to comply with this act. Therefore, it must be verified that the product was in fact shipped interstate; or if it was make interstate shipments. In addition, the product must bear a label complying with the act which requires all ingredients be listed according to the order of their predominance.

[33 FR 17948, Dec. 4, 1968, as amended at 43 FR 24532, June 6, 1978]

§ 8-74.113 Telecommunications equipment.

(a) Solicitations, including those for construction, based on detailed purchase descriptions or formal specifications for telecommunications equipment, as defined in Manual MP-6, Part VIII,¹ will include the clause required by § 8-7.150-18.

(b) The descriptive literature to be furnished by the contractor after award, required by the clause in § 8-7.150-18, is to be reviewed and approved by the Office of Data Management and Telecommunications prior to delivery and/or installation by the contractor. Promptly upon receipt of the descriptive literature, contracting officers will forward it together with a copy of the contract, the formal specification, or the detailed purchase description to the Assistant Deputy Administrator for Procurement and Supply (93).

(c) Solicitations, including those for construction, for telecommunications equipment based on "brand name or equal" purchase description (see FPR 1-1.307-4 to 1-1.307-9 inclusive) are subject to the following:

¹ Available at any Veterans Administration station.

(1) Prior to award, contracting officers will forward to the Assistant Deputy Administrator for Procurement and Supply (93) the abstract of bids, one copy of each offer received, including descriptive literature and pertinent letters, and the comments and recommendations of the contracting officer.

(2) No commitments are to be made to contractors prior to receipt of Central Office reaction.

(3) Allowance of at least 30 days time for acceptance will be specified in the solicitation in order to allow sufficient time for the review required by this paragraph (c). (See FPR 1-2.201(a)(15).)

[34 FR 15754, Oct. 11, 1969, as amended at 46 FR 60824, Dec. 14, 1981]

§ 8-74.114 Paid use of conference facilities.

(a) The rental of space for VA-sponsored symposia and training sessions may be unwarranted when other alternatives are available at no expense or reduced expense to the Government. After the geographical location for a VA conference has been selected, based on minimum overall travel costs for all Government participants and other relevant factors, a request for conference space will be forwarded to the servicing Supply activity. The request for conference space should afford the contracting officer every opportunity to secure rent-free facilities.

(b) The following criteria for the selection of an appropriate facility will apply:

(1) A thorough effort will be made to schedule conferences and training sessions so that the conference facilities of VA installations in the city where the conference is held may be used.

(2) Where no VA space is available, the General Services Administration will be contacted to determine if there is other Government agency space which may be used.

(3) Efforts will be made to schedule conferences, where Government space is not available, through hotels and motels which offer free conference facilities in exchange for a stipulated

number of lodging reservations for participants. Surcharges per lodging or increased room rates, to offset the cost of the conference room, shall be considered payment for such space.

(4) In the event none of these is available on the desired dates, consideration will be given to rescheduling the conference to avail the VA of the use of facilities without payment of a fee.

(5) If none of the above is practical, rental conference space will be obtained. Complete documentation of efforts to secure free conference space, as outlined above, will be maintained in the purchase order file. The costs of coffee, refreshments, meals, lodgings, tips and other supplies and services not directly related to the presentations within the conference space are not allowable.

(c) The conference coordinator of the requesting organization will continue to be responsible for individual room reservations, including any cancellations.

[46 FR 31263, June 15, 1981, as amended at 46 FR 60824, Dec. 14, 1981]

§ 8-74.115 Asbestos.

[46 FR 31263, June 15, 1981]

§ 8-74.115-1 General.

This section applies to the purchase and use of asbestos products and equipment or materials containing asbestos products in the Veterans Administration.

[46 FR 31263, June 15, 1981]

§ 8-74.115-2 Background.

Exposure to asbestos is associated with chronic and debilitating lung disease and cancer. To reduce the health hazard related to the exposure to asbestos, the U.S. Environmental Protection Agency and the U.S. Department of Labor (Occupational Safety and Health Administration) have issued specific regulations on asbestos. Although these regulations do not call for a complete ban on the use of asbestos they do impose strict requirements on its use, airborne contamination and disposal.

[46 FR 31263, June 15, 1981]

§ 8-74.115-3 Approving authority.

Asbestos products and equipment or materials containing asbestos products shall not be specified nor purchased for use in the Veterans Administration if any suitable substitutes are available. If suitable substitutes are not available, specific authorization to purchase and use asbestos products, and equipment or materials specifying asbestos products, must be granted by the Administrator or designee. Requests for authorization will be submitted through the Director, Engineering Service (10A4A5). The following information will be provided:

(a) The name of the product, source of supply, and physical form of the asbestos as used in the product or equipment.

(b) A description of use, including purpose, urgency, methodology, qualities, and by whom.

(c) Safeguards being employed, with particular emphasis on the identification of the asbestos products, procedures to be taken to prevent airborne contamination, and disposal.

§ 8-74.115-4 Exempted products containing asbestos.

VA Central Office, Engineering Service (10A4A5), is responsible for maintaining a list of products containing asbestos which are exempted by the Administrator or designee from this policy.

[46 FR 31263, June 15, 1981]

§ 8-74.116 Food service equipment.

(a) All new food service equipment purchased for Dietetic Service through other than the Defense General Supply Center (DGSC) sources must meet requirements set forth by the National Sanitation Foundation (NSF).

(b) The contracting officer will accept an affixed NSF label and/or documentation of the certification by NSF from the contractor as evidence that the subject equipment meets sanitation standards issued by the Foundation.

[46 FR 60825, Dec. 14, 1981]

PART 8-75—DELEGATIONS OF AUTHORITY

Sec.

8-75.000 Scope of part.

Subpart 8-75.1—General Delegations

8-75.101 Delegation.

Subpart 8-75.2—Special and Limited Delegations

8-75.201 Delegations.

8-75.201-2 Architectural and engineering service; Central Office.

8-75.201-3 Construction contracts; Central Office.

8-75.201-4 Utility-connection and other site facility contracts; Central Office.

8-75.201-5 Construction contracts; field stations, supply depots.

8-75.201-6 Publications Service, Central Office.

8-75.201-7 Issue of Government bills of lading—Transportation of remains deceased beneficiaries.

8-75.201-8 Issue of Government bills of lading—Transportation of property.

8-75.201-9 Building and Supply Service, Central Office.

8-75.201-10 Architectural and engineering services; field stations, supply depots.

8-75.201-11 [Reserved]

8-75.201-12 Loan guaranty program.

8-75.201-13 Education and rehabilitation program.

8-75.201-14 [Reserved]

8-75.201-15 Medical, dental, and ancillary services.

8-75.201-16 Department of Memorial Affairs.

8-75.201-17 Letters of agreement.

AUTHORITY. General Services Administration Delegation No. 410 dated 3-30-62, sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

§ 8-75.000 Scope of part.

This part sets forth general and limited delegations of authority to execute, award and administer contracts, purchase orders and other contractual agreements.

[28 FR 2349, Mar. 12, 1963]

Subpart 8-75.1—General Delegations

§ 8-75.101 Delegation.

(a) Except as otherwise provided for by law, VA regulations and these pro-

curement regulations, the authority vested in the Administrator to execute, award, and administer contracts, purchase orders, and other agreements (including interagency agreements) for the expenditure of funds involved in the acquisition of personal property, or services (excluding construction and architect engineer service), and for the sale of personal property, is hereby delegated to those employees of the Veterans Administration appointed or designated to the following positions:

(1) Director, Supply Service.

(2) Directors, VA Supply Depots.

(3) Director, VA Marketing Center.

(4) Chief, Procurement Division, Central Office.

(5) Chiefs, Marketing Divisions, VA Marketing Center.

(6) Chiefs, Supply Services, VA field stations.

(b) The contracting officers named in paragraph (a) of this section may designate one or more of their subordinates as a contracting officer and authority is hereby delegated to such subordinates, to execute, award and administer contracts, purchase orders, and other agreements for the acquisition of supplies, equipment, nonpersonal services, and for the sale of personal property. Designations will be in writing, specifically state the scope and limitation of the designee's contractual authority and shall be confined to only those subordinates who are actively engaged in purchasing and contracting functions.

(c) When exercising the authority contained in these subparts, the designated employee is identified as the Contracting Officer and will function within the limits prescribed by law, VA Procurement Regulations and the Federal Procurement Regulations.

[28 FR 2349, Mar. 12, 1963, as amended at 38 FR 10007, Apr. 23, 1973; 45 FR 3036, Jan. 16, 1980]

Subpart 8-75.2—Special and Limited Delegations

§ 8-75.201 Delegations.

The authority vested in the Administrator to execute, award and administer contracts, purchase orders and

other agreements for the expenditure of funds involved in the acquisition of the specific services set forth in this subpart is hereby delegated to those employees appointed or designated to the positions specified in this subpart.

[28 FR 2350, Mar. 12, 1963]

§ 8-75.201-2 Architectural and engineering services; Central Office.

(a) Authority to execute, award, and administer contracts and related documents involving the expenditure of funds for the acquisition of architectural and engineering services and of services of artists for works of art authorized in connection with new buildings, is delegated to the following:

(1) Assistant Administrator for Construction.

(2) Project Directors.

(b) The contracting officers named in paragraph (a) of this section may designate the Deputy Project Director and/or the Senior Project Supervisors and authority is hereby delegated to such subordinates to execute, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority.

[46 FR 22898, Apr. 4, 1981]

§ 8-75.201-3 Construction contracts; Central Office.

(a) Authority to execute, award, and administer contracts and related documents involving the expenditure of funds for the acquisition of construction services is delegated to the following:

(1) Assistant Administrator for Construction.

(2) Project Directors.

(b) The contracting officers named in paragraph (a) of this section may designate the Deputy Project Director and/or the Senior Project Supervisors and authority is hereby delegated to such subordinates to execute, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically state the

scope and limitations of the designee's contractual authority.

[46 FR 22898, Apr. 4, 1981]

§ 8-75.201-4 Utility-connection and other site facility contracts; Central Office.

Authority to execute, award, and administer contracts and related documents involving the expenditure of funds for the acquisition of utility connections and other site facilities is delegated to the following:

(a) Assistant Administrator for Construction.

(b) Director of Engineering.

(c) Chief, Utilities Contract Administration Division.

[46 FR 22898, Apr. 4, 1981]

§ 8-75.201-5 Construction contracts; field stations, supply depots.

The Chief, Supply Service, at a field station, the Director VA Supply Depot, and any employee designated by them in accordance with § 8-75.101(b) of this Chapter are authorized to execute, award, and administer contracts for construction projects assigned by the Chief Medical Director, under delegation of the Assistant Administrator for Construction, or those accomplished with station or depot funds. Contracting officers, in executing, awarding and administering construction contracts, including those for maintenance and repair projects, will be guided by Federal Procurement Regulations, Veterans Administration Procurement Regulations, and procedures established by the Assistant Administrator for Construction.

[41 FR 51019, Nov. 19, 1976]

§ 8-75.201-6 Publications Service, Central Office.

Authority to place orders for printing services against contracts established by the Government Printing Office, and for specialty forms, tabulating cards, marginally punched continuous paper, and art and design services, against contracts established by the General Services Administration, and for printing, duplicating, or other reproduction services, as well as microfilming, against contracts established

by the Office of Supply Services, is delegated as follows:

(a) To the Director, Publications Service, Administrative Services, Central Office.

(b) To the Chief, Printing Procurement Division, and the Supervisors of both the Commercial and Government procurement activities for orders not exceeding \$10,000 per transaction, when so delegated by the Director, Publications Service.

[45 FR 3036, Jan. 16, 1980, as amended at 46 FR 22898, Apr. 22, 1981]

§ 8-75.201-7 Issue of government bills of lading—Transportation of remains of deceased beneficiaries.

The Chief, Medical Administration Service, at a Veterans Administration medical center, or the person acting in that capacity, is delegated authority to issue and to sign as "Issuing Officer," Government bills of lading for the shipment of the remains of beneficiaries expiring in a Veterans Administration medical center.

[45 FR 3036, Jan. 16, 1980]

§ 8-75.201-8 Issue of Government bills of lading—Transportation of property.

(a) Authority to issue and sign Government bills of lading for the transportation of supplies, material, and equipment is delegated to the following:

(1) Chiefs, Transportation Sections, VA Supply Depots.

(2) Chief, Warehouse Section, VA Forms and Publications Depot.

(3) Traffic Manager, Office of Supply Services, Central Office.

(b) The employees named in paragraph (a) of this section may designate one or more of their subordinates and authority is hereby delegated to such subordinates to issue and sign Government bills of lading for the transportation of supplies, material, and equipment. Designations will be in writing and specifically set forth the scope and limitation of the designee's authority.

[33 FR 6294, Apr. 23, 1968, as amended at 36 FR 12218, June 29, 1971; 46 FR 22898, Apr. 22, 1981]

§ 8-75.201-9 Building and Supply Service, Central Office.

(a) Authority to make the procurements set forth below is delegated to the Chief, Supply Division, Building and Supply Service, Office of the Assistant Administrator for Administrative Services, Central Office.

(1) Purchases using Imprest Funds.

(2) The following acquisitions not to exceed \$10,000 per transaction:

(i) Requisitions from GSA Supply Centers.

(ii) Purchases from Federal Supply Schedules.

(iii) Purchases using Blanket Purchase Authorizations.

(iv) Bills of Lading.

(v) Purchases from GSA Self-Service Stores.

(vi) Subscriptions requested from Books and Periodicals Division of the Somerville Supply Depot.

(3) The following acquisitions not to exceed \$1,000 per transaction:

(i) Procurement of training.

(ii) Competitive purchases in the open market.

(4) Noncompetitive purchases in the open market not exceeding \$500 per transaction, except when approved by the Office of Supply Services.

(b) The contracting officer named in paragraph (a) of this section may designate one or more subordinates as a contracting officer and authority is hereby delegated to such subordinates to execute, award and administer contracts, purchase orders, and other agreements for the acquisition of supplies, equipment, nonpersonal services, and for the sale of personal property. Designations will be in writing, specifically state the scope and limitation of the designee's contractual authority and shall be confined to only those subordinates who are actively engaged in purchasing and contracting functions.

(c) When exercising the authority contained in these subparts, the designated employee is identified as the Contracting Officer and will function within the limits prescribed by law, VA Procurement Regulations and the Federal Procurement Regulations.

[45 FR 3036, Jan. 16, 1980, as amended at 46 FR 22898, Apr. 22, 1981]

§ 8-75.201-10 Architectural and engineering services; field stations, supply depots.

The Chief, Supply Service, at a field station, the Director VA Supply Depot, and any employee designated by them in accordance with § 8-75.101(b) of this chapter are authorized to execute, award, and administer contracts for the acquisition of architectural and engineering services when the cost of such services are chargeable to station or depot funds.

[41 FR 51019, Nov. 19, 1976]

§ 8-75.201-11 [Reserved]**§ 8-75.201-12 Loan guaranty program.**

(a) The authority to execute, award, and administer contracts, purchase orders, and other agreements for the expenditure of funds for supplies or services necessary to carry out the provisions of chapter 37, title 38, United States Code, including but not limited to contracts for the services of technical fee personnel, and contracts for the maintenance, protection, repair, rehabilitation, enlargement, completion, conversion, or demolition of properties acquired under chapter 37, title 38, United States Code, is delegated to:

- (1) Chief Benefits Director.
- (2) Director, Loan Guaranty Service.
- (3) Director, Regional Office.
- (4) Director, VA Medical and Regional Office Center.
- (5) Director, VA Center.
- (6) Loan Guaranty Officer.
- (7) Assistant Loan Guaranty Officer.

(b) The Contracting Officers named in paragraph (a) of this section may designate one or more of their subordinates and authority is hereby delegated to such subordinates to execute, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority.

[30 FR 7602, June 11, 1965, as amended at 45 FR 3036, Jan. 16, 1980]

§ 8-75.201-13 Education and rehabilitation programs.

(a) Except as stated in this section, the authority to negotiate, award, and administer contracts, purchase orders, and other agreements for the expenditure of funds for the vocational rehabilitation program is delegated to:

- (1) Chief Benefits Director.
- (2) Director, Education Service and Director, Rehabilitation Service.
- (3) Director, Regional Office.
- (4) Director, VA Medical and Regional Office Center.
- (5) Director, VA Center.

(b) The Chief Benefits Director, Director, Education Service and Director, Rehabilitation Service, are delegated authority to execute, award and administer contracts, agreements, or supplements thereto for correspondence courses.

(c) The Chief Benefits Director; Director, Education Service and Director, Rehabilitation Service; and Directors, Regional Offices and VA Medical and Regional Office Centers, are delegated authority to execute, award and administer contracts, agreements, or supplements thereto with educational institutions and other approved agencies for the purpose of providing services relative to the counseling of persons eligible for vocational rehabilitation or educational assistance under title 38, United States Code.

(d) The Chief Benefits Director, the Director, Education Service and the Director, Rehabilitation Service, are delegated authority to execute, award and administer contracts, agreements, or supplements thereto with State approving agencies for services relating to approving courses offered by educational institutions and training establishments.

(e) The contracting officers named in paragraphs (a), (b), and (c) of this section may designate one or more of their subordinates and authority is hereby delegated to such subordinates to negotiate, award, and administer contracts, purchase orders, and other agreements for the purposes stated in paragraphs (a), (b), and (c) of this section. Designation of subordinates will be in writing by name or position title and will specifically state the scope

and limitations of the contractual authority of each designee.

[30 FR 7602, June 11, 1965, as amended at 38 FR 10008, Apr. 23, 1973; 45 FR 3036, Jan. 16, 1980; 46 FR 22898, Apr. 22, 1981]

§ 8-75.201-14 [Reserved]

§ 8-75.201-15 Medical, dental, and ancillary services.

(a) The Chief of Staff; the physician assigned the responsibility for the ambulatory care function; and the Chief, Medical Administration Service, at a Veterans Administration station are delegated authority to execute authorizations for medical, dental, and ancillary services under \$2,500 per authorization when such services are not available from existing contracts or agreements. Forms specified in § 8-3.605-3 of Part 8-3 of this chapter will be used for this purpose and when ordering such services from existing contracts.

(b) The contracting officers named in paragraph (a) of this section may designate one or more of their subordinates to execute the forms for purposes stated in paragraph (a) of this section. Designations will be in writing and will specifically set forth the scope and limitations of the designee's authority.

[38 FR 10008, Apr. 23, 1973]

§ 8-75.201-16 Department of Memorial Affairs.

Authority for the Department of Memorial Affairs to procure supplies, equipment and nonpersonal services is delegated as follows:

(a) Authority to execute, award, and administer contracts and related documents involving the expenditures of funds for the acquisition and transportation of headstones and markers is delegated to the Director, Monument Service, the Assistant Director for Procurement, and the Chief and Assistant Chief, Funds and Contracts Division, of the Monument Service.

(b) Authority to issue and sign Government Bills of Lading for the transportation of headstones and markers is further delegated to:

(1) Staff Assistant for Transportation, Monument Service.

(2) Chief, Transportation Division, Monument Service.

(c) Authority to procure, in emergency situations when the servicing supply organization cannot be utilized and in accordance with the provisions of Federal Procurement Regulations 1-3.6, supplies, equipment, and nonpersonal services (including construction) required for the operation of national cemeteries is delegated to:

(1) Chief Memorial Affairs Director and Deputy Chief Memorial Affairs Director.

(2) Director and Deputy Director, National Cemetery Area Office.

(d) Authority to procure items and nonpersonal services up to \$300 per transaction for the operation of national cemeteries is delegated to the Director of each national cemetery. The authority is to be used only in emergency situations when the servicing supply organization cannot be utilized, and the method of purchase is limited to the use of SF 44 as provided in Federal Procurement Regulation 1-3.605-1.

[45 FR 3037, Jan. 16, 1980]

§ 8-75.201-17 Letters of agreement.

(a) Authority to execute, award, and administer letters of agreement is delegated to the following:

(1) General Counsel.

(2) Assistant Deputy Administrator for Personnel and Labor Relations.

(3) Chief Medical Director.

(4) Chief Benefits Director.

(5) Chief Memorial Affairs Director.

(6) Assistant Deputy Administrator for Procurement and Supply.

(b) The contracting officers name in paragraph (a) of this section may designate one or more subordinates, and authority to execute the same duties and responsibilities is hereby delegated to such subordinates. All such designations will be in writing and will specifically state the scope and limitations of the designees' contractual authority. Copies of all designations will be forwarded to the Assistant Deputy Administrator for Procurement and Supply (93).

[47 FR 25530, June 14, 1982]

**PART 8-76—CONTRACTING
AUTHORITY OF THE INSPECTOR
GENERAL**

Sec.

8-76.000 Scope of part.

**Subpart 8-76.1—Authority and Governing
Regulations**

8-76.101 Contracting authority.

8-76.102 Applicability of Federal Procurement Regulations and VA Procurement Regulations.

AUTHORITY: (38 U.S.C. 210(c); 40 U.S.C. 486(c)).

SOURCE: 45 FR 8981, Feb. 11, 1980, unless otherwise noted.

§ 8-76.000 Scope of part.

This part sets forth the contracting authority of the Inspector General pursuant to Pub. L. 95-452, the Inspector General Act of 1978.

**Subpart 8-76.1—Authority and
Governing Regulations**

§ 8-76.101 Contracting authority.

(a) As provided by section 6(a) of Pub. L. 95-452 (October 12, 1978), the Inspector General is authorized to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of the Act, to the extent and in such amounts as may be provided in advance by appropriations Acts.

(b) In exercising the special authority provided in paragraph (a) of this section, the Inspector General may request the assistance of the Supply Service in developing appropriate contract or agreement documents.

(c) If, in the opinion of the Inspector General, a reason to exercise the special authority does not exist, the services required by the Inspector General shall be obtained by the Supply Service in accordance with the provisions of FPR and VAPR.

§ 8-76.102 Applicability of Federal procurement regulations and VA procurement regulations.

Contracts entered into under the authority of § 8-76.101 are subject to the

provisions of the Federal Procurement Regulations. In addition, such contracts are subject to those provisions of VAPR which implement and supplement the FPR on matters other than those stemming from or related to delegations of the Administrator's contracting authority.

**PART 8-95—LOAN GUARANTY AND
EDUCATION AND REHABILITATION
PROGRAMS**

Subpart 8-95.1—Loan Guaranty Program

Sec.

8-95.100 Scope of subpart.

8-95.101 Policy.

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8-95.106 Lien waivers.

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**Subpart 8-95.2—Education and Rehabilitation
Program**

8-95.200 Scope of subpart.

8-95.201 General.

8-95.201-1 Requirements for use of contracts.

8-95.201-2 Requirements when contracts are not required.

8-95.201-3 Medical services.

8-95.201-4 Letter contracts.

8-95.202 Marking and release of supplies.

8-95.203 Renewals or supplements to contracts.

8-95.204 Guaranteed payment.

8-95.205 Proration of charges.

8-95.206 Other fees and charges.

8-95.207 Payment of tuition or fees.

8-95.209 Records and reports.

8-95.210 Correspondence courses.

8-95.211 Information concerning correspondence courses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); sec. 210(c), 72 Stat. 1114, 38 U.S.C. 210(c).

SOURCE: 30 FR 7603, June 11, 1965, unless otherwise noted.

**Subpart 8-95.1—Loan Guaranty
Program**

§ 8-95.100 Scope of subpart.

This subpart sets forth policy and procedure with respect to the loan guaranty and direct loan programs as

it pertains to property management matters, including the acquisition, management, and disposition of property, real, personal, or mixed, which were secured by loans guaranteed, insured, or made pursuant to title 38, United States Code.

§ 8-95.101 Policy.

It is the policy of the Veterans Administration that all procurement effected by formal advertising or negotiation pertaining to the expenditure of funds for the repair and maintenance of Veterans Administration property acquired under chapter 37, title 38, United States Code, be made in accordance with those regulations as set forth in FPR 1-2, 1-3, and 1-16 as supplemented or implemented by Parts 8-2, 8-3, and 8-16 of this chapter and otherwise authorized by this Subpart 8-95.1 and specific subparts or sections as stated in this subpart.

[35 FR 8485, June 2, 1970]

§ 8-95.102 Authorization for repairs to properties.

(a) Except as provided in this subpart, Directors, VA Regional Offices, are authorized to purchase supplies and services for the repair to any Veterans Administration property acquired under chapter 37, title 38, United States Code, where the cost does not exceed \$5,000 on any single transaction.

(b) In those cases where the expenditure is known or estimated to exceed \$5,000, the request, together with the loan guaranty folder, will be forwarded to the Chief Benefits Director for approval.

(c) During the period when the Veterans Administration has assumed custody of the property from a holder and prior to its conveyance to the Veterans Administration pursuant to 38 CFR 36.43210, repairs are authorized not in excess of \$2,000 when appropriate to make the property ready for sale at an earlier date than would otherwise be possible if the repair program was delayed until such time as the Veterans Administration acquired absolute title.

(d) No repairs may be made to property by the holder when it has continued custody except for emergency re-

pairs not in excess of \$50 unless adequate notice has been given the Director, VA Regional Office. Emergency repairs as applied in this paragraph will be deemed to mean those requiring immediate action to preserve the property from serious damage or to correct a situation imminently dangerous to life or limb, and includes the initial cleanup of the property in order to prevent the risk of damage by fire or vandalism.

(e) An approved management broker may be authorized, at the time a property is listed with him/her to incur expenses for fuel and utilities or other recurring items which are required to be furnished by the Veterans Administration to its tenants or are required in the maintenance of the property. Advance blanket authorizations to management brokers will be limited to repairs not in excess of \$200 in any transaction. Repair jobs may not be split to circumvent this restriction. Expenditures in excess of \$200 require prior approval of the Director, Regional Office, having jurisdiction of the property.

[38 FR 26369, Sept. 20, 1973, as amended at 46 FR 26644, May 14, 1981; 47 FR 15333, Apr. 9, 1982]

§ 8-95.103 Repair specifications.

(a) Repair specifications covering authorized repairs will be formulated in sufficient detail to permit competitive bids on an identical basis and as a minimum will contain the following:

(1) Requirement that the contractor obtain all necessary permits.

(2) Where the property is vacant, require that the contractor provide the heat, light, power, and water necessary to accomplish the work.

(3) Requirement that inspection will be made at stated intervals if appropriate and that final inspection will be made in all cases.

(4) Any other requirement necessary to protect the interests of the Government.

(b) The minimum construction requirements may be used as a guide in the preparation of repair specifications. Specifications should not require conformance with minimum construction requirements in cases where

scope of repairs are minor, the relatively small value of the property or its poor salability. The quality of repairs to be specified shall be consistent with the type and value of the property.

(c) In all cases, the specifications for repairs will be based on one of the following categories:

(1) Minimum specifications for rental purposes.

(2) Average specifications for sales purposes.

(3) Above average specifications for desirable properties.

§ 8-95.104 Qualification of bidders.

(a) Qualifications of bidders shall be established in accordance with the procedures outlined in FPR 1-1.12 and Subpart 8-1.12 of this chapter.

(b) Management brokers are not considered acceptable bidders for repair contracts due to their close association on a fee basis with the Veterans Administration. This restriction would apply equally to any contracting firm in which the management broker has an interest and in which it could be presumed that such firm would have an advantage over the other bidders. This does not preclude the performance of work by management brokers of a routine recurring maintenance category or minor repairs by personnel employed directly on the payroll of the broker. In these cases, it must be established that any charges for such services are not in excess of the prevailing fees for like services in the area.

[30 FR 7603, June 11, 1965, as amended at 38 FR 26369, Sept. 20, 1973]

§ 8-95.105 Debarred, suspended or ineligible bidders.

Firms or individuals will be debarred or suspended on accordance with FPR 1-1.6 and Subpart 8-1.6 of this chapter.

[38 FR 26369, Sept. 20, 1973]

§ 8-95.106 Lien waivers.

(a) Contracts in the amount of \$1,000 or more will contain a requirement that the contractor will sign a formal release in full or a lien waiver before payment may be made. The re-

lease or waiver will accompany the contractor's invoice.

(b) Contractors will be required to notify the Director, Regional Office, of any subcontracts for services or materials in excess of \$1,000. Such subcontractors or material men will be required to sign the release or waiver jointly with the prime contractor or to execute release or waiver in his/her own name.

(c) Prior to any authorized partial payment the contractor will be required to execute a release or waiver.

(d) Due to the variations of local law, no standard release or waiver is prescribed. Each release or waiver will be prepared in accordance with local law and will be in form acceptable by the District Counsel.

[30 FR 7603, June 11, 1965, as amended at 38 FR 26369, Sept. 20, 1973; 46 FR 26644, Apr. 14, 1981]

§ 8-95.107 Stipulations against liens.

(a) Where determined necessary by the Director, Regional Office, contracts in an amount less than \$1,000 may contain the following:

The contractor expressly waives any and all rights to file or maintain any mechanics lien or claim against the aforesaid premises.

(b) Contracts in the amount of \$1,000 or more or where there is doubt as to the financial responsibility of the contractor will provide maximum protection to the Government by including such requirements as are available under local law. Advice and approval of any contract stipulation or legal stipulations against liens will be obtained from the District Counsel.

[30 FR 7603, June 11, 1965, as amended at 38 FR 26369, Sept. 20, 1973; 46 FR 26644, Apr. 14, 1981]

Subpart 8-95.2—Education and Rehabilitation Program

§ 8-95.200 Scope of subpart.

This subpart sets forth policy and procedures with respect to the education and rehabilitation program as it pertains to contracts for training, education, guidance and approval of institutions and training establishments.

[38 FR 26369, Sept. 20, 1973]

§ 8-95.201 General.**§ 8-95.201-1 Requirements for use of contracts.**

Contracts will be negotiated for tuition, fees, books, supplies, equipment, and other allowable expenses incurred by the institution for the training of eligible veterans under chapter 31, title 38, United States Code, under the following circumstances:

(a) With institutions offering courses of instruction by correspondence. Courses of instruction by correspondence is deemed to mean a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work which involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) With institutions, establishments, or individuals approved to provide training to eligible veterans under chapter 31, title 38, United States Code, for whom special services are furnished at the request of the Veterans Administration.

§ 8-95.201-2 Requirements when contracts are not required.

(a) When a contract is not required, a signed statement of charges will be obtained from the educational institution or training establishment for courses to be offered, including the rate of tuition, fees, and separate charges, if any, for books, supplies, and equipment handling charges, refund policy and such other provisions as are required to determine proper payment. The statement of charges may be in the form of a statement on VA Form 22-1905, Authorization and Certification of Entrance or Reentrance into Training, that charges will be in accordance with catalog or other published document (identify publication). The statement of charges may not exceed those

charges paid by nonveterans or that is published in the school catalog or other published document.

(b) For the purpose of this section a contract will not be required when all tuition, fees, books, supplies, or services necessary to train, or educate an eligible veteran under chapter 31, title 38, United States Code, are published in the school catalog or other published document.

[30 FR 7603, June 11, 1965, as amended at 38 FR 26369, Sept. 20, 1973]

§ 8-95.201-3 Medical services.

The medical services provided trainees under vocational rehabilitation and education contracts, agreements, or arrangements are separate and distinct from any other medical service under the jurisdiction of the Department of Medicine and Surgery to which the veteran may be entitled and no certificate of eligibility is required from that department.

§ 8-95.201-4 Letter contracts.

Pursuant to FPR 1-3.408 and § 8-3.408, letter contracts are authorized for use in those cases where it is not possible to complete a formal contract with an approved institution prior to the enrollment of eligible veterans for training.

§ 8-95.202 Marking and release of supplies.

Supplies will not be marked to indicate ownership by the United States and will be deemed released to the trainee at the time they are furnished.

§ 8-95.203 Renewals or supplements to contracts.

Except for contracts for vocational counseling, contracts may be renewed from year to year, providing there is no change in the schedule or provisions as originally consummated by completion of a renewal agreement no later than 30 days prior to the expiration of the contract.

(a) Supplements may be negotiated at any time during the contract period upon the completion of a supplemental agreement.

(b) contracts for vocational counseling may provide for automatic extension from year to year.

§ 8-95.204 Guaranteed payment.

No contract or agreement may be entered into with any educational institution or training establishment whereby the Veterans Administration will be required to pay a minimum charge or be required to enroll a minimum number of trainees per quarter, semester, course, or term.

§ 8-95.205 Proration of charges.

The contract will include the exact formula agreed upon for the proration of charges in the event that trainees are withdrawn or discontinued prior to the end of the term, semester, course, or quarter, or the course is completed in less time than that stated in the contract.

§ 8-95.206 Other fees and charges.

Fees and other charges which are not prescribed by law but are by non-government organizations such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on-the-job may be paid provided there are no facilities feasibly available whereby the necessary training can be accomplished without paying such charges. Payment for such fees will be made in accordance with Subpart 8-3.6.

§ 8-95.207 Payment of tuition or fees.

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees will provide for the following:

(1) Payment for tuition or fees will be made in arrears and will be prorated in installments over the school year or the length of the course except:

(i) Institutions may be paid in accordance with the provision of paragraph (a)(2) of this section, provided such institutions operate on a regular term, quarter, or semester basis and normally accept students only at the beginning of the term, quarter, or semester and provided further such institutions are either:

(a) Institutions of higher learning that use a standard unit of credit rec-

ognized by accrediting associations (such institutions will include those which are members of recognized national or regional educational accrediting associations, and those which, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions which are members of national or regional accrediting associations).

(b) Public tax supported institutions.

(c) Institutions operated and controlled by State, county, or local boards of education.

(2) Institutions coming within the exceptions of paragraph (a)(1) of this section which have a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(3) Proration of charges will not apply to a fee which is for noncontinuing service such as registration fee, etc.

(b) The period for which payment of charges may be made will be the period of actual enrollment and subject to the following:

(1) The effective date will be the date of the trainee's entrance into training status except that payment may be made for an entire semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or will not set a date acceptable to the Veterans Administration, payment may be prorated on the basis of attendance regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

(c) The terminal date to which payment will be made is the day following:

(1) The end of the semester, term, or quarter during which the training is furnished.

(2) The date of interruption or discontinuance of training.

(3) The date of completion of the course.

§ 8-95.209 Records and reports.

Contracts, agreements, or arrangements will provide for the number and frequency of reports, adequate financial records to support payment for each trainee and maintenance of attendance and progress records. Such records will be preserved for a period of 4 years following the date of the last payment or a longer period if requested by a representative of the General Accounting Office or the Veterans Administration.

[36 FR 19697, Oct. 9, 1971]

§ 8-95.210 Correspondence courses.

Contracts with institutions for correspondence courses will provide that:

(a) Major changes in courses or course material will not be binding on the Veterans Administration until such time as a supplemental agreement is negotiated to the contract.

(b) Minor changes in course or course material not affecting the length of the course or number of lessons and not lowering the educational value of the course or the quality of the course material such as revision of text, the substitution of a newer lesson for an older one or the substitution of equipment of equal or greater value are permitted without supplemental agreements. Such minor changes and revisions shall be placed on file with the Contracting Officer at the time of the change or revision.

(c) Trainees be provided with prompt and adequate lesson service and, unless otherwise specified in the

contract, be furnished the same texts, lessons service, diplomas, and other services as are normally provided for regularly enrolled nonveteran students.

(d) All lessons be adequately serviced on an individual basis. Grouping of lessons into units or partial servicing does not meet this requirement.

(e) Each lesson must have a separate examination adequate in terms of lesson content.

(f) The training of persons under a Veterans Administration contract or the fact that the United States is utilizing the facilities of the institution for training veterans shall not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under chapter 31, title 38, United States Code, and shall not be directed or pointed specifically to veterans.

(g) The rates, fees, and charges are not in excess of those charged nonveterans.

(h) That payment will be made on a lesson completed basis in areas for assignments sent in by trainees and serviced during a pay period as established by the contract.

(i) Payment will be made only once for each lesson even though it is necessary to service a lesson more than once.

§ 8-95.211 Information concerning correspondence courses.

Specific questions on correspondence courses as to the content of courses, academic credit, and entrance requirements for courses included in Veterans Administration contracts may be directed to the institutions offering the courses.

[36 FR 19697, Oct. 9, 1971]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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List of CFR Sections Affected

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